

Permit

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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 11-18 (CO)

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 National Nuclear Security Administration (“DOE”) and Los Alamos National Security, LLC (“LANS”) (collectively the “Parties”). The Parties enter into this Stipulated Order to resolve alleged violations of a prior Settlement Agreement and Stipulated Final Order, dated June 14, 2007, under the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-4-1 to 74-4-14, which required DOE and LANS, among other things, to provide updated environmental monitoring data from Los Alamos National Laboratory (“Laboratory”) to an independent manager of a public database known as RACER.



## **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, including assessing civil penalties for violations thereof.

2. The Respondent United States Department of Energy National Nuclear Security Administration is a department of the United States government. It is the owner and a co-operator of 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.

### **B. HISTORY**

4. The Laboratory is a national research laboratory covering approximately 40 square miles located on the Pajarito Plateau in Los Alamos County, New Mexico. The Laboratory conducts multidisciplinary research and development related to its core national security mission and in fields that include nuclear weapons design, bioscience, chemistry, computer science, renewable energy, high explosives, medicine, nanotechnology, earth and environmental sciences, materials science, and physics.

5. The Laboratory operations generate a variety of hazardous wastes and other solid wastes. The Laboratory is a facility that treats and stores hazardous waste, and in the past it has disposed of hazardous waste and other solid waste on site. Under the HWA, NMSA § 74-4-4(B)(6), the Laboratory is required to have a hazardous waste permit. On November 8, 1989, the New

Mexico Department of Health, predecessor to the Department, issued to DOE and the University of California, predecessor to LANS, a Hazardous Waste Facility Permit (“Permit”) for the Laboratory (Permit No. NM0890010515-1), pursuant to the HWA.

6. Management of hazardous wastes and solid wastes at the Laboratory has resulted in the release of hazardous waste, hazardous waste constituents, and other solid wastes into the environment. Under the HWA, NMSA 1978, §§ 74-4-4(A)(5)(h) and 74-4-10(E), the Laboratory is required to take corrective action for all releases of hazardous waste or hazardous waste constituents from any solid waste management unit, regardless of the time at which waste was placed in the unit. On March 1, 2005, the Department, DOE, and the University of California, predecessor to LANS, entered into a Compliance Order on Consent (“Consent Order”) providing for investigation and cleanup of hazardous wastes and hazardous constituents at the Laboratory, pursuant to the HWA and other authority.

7. On June 14, 2007, the Secretary of Environment approved a Settlement Agreement and Stipulated Final Order (“2007 Stipulated Order”) pursuant to his authority under the HWA. The 2007 Stipulated Order resolved various alleged violations of the Permit and the Consent Order.

8. Section IV of the 2007 Stipulated Order required DOE and LANS to continue to fund the data management system, known as the “Risk Analysis, Communication, Evaluation, and Reduction at Los Alamos National Laboratory” project, or “RACER” that was being developed and managed by Colorado State University and Risk Assessment Corporation (“CSU/RAC”). The RACER database was to begin functioning and be available to the public by December 31, 2007, and it was to be turned over by CSU/RAC to the New Mexico Community Foundation, an independent manager, by September 30, 2008. Under Section IV, Paragraph 29 of the 2007 Stipulated Order, as

soon as the RACER database was functioning, DOE and LANS were to “provide updated data to the independent manager each week until the termination of the Consent Order.”

9. The Department alleges that from September 7, 2010 until mid-March 2011, rock, soil, and pore gas data were not entered into the RACER database.

10. On June 3, 2011, the Department sent the Respondents a letter entitled Notice of Violation (“NOV”) notifying them of the alleged violation.

11. Respondents state that they have provided environmental updates weekly to RACER since the 2007 Stipulated Order was in effect, including approximately 1.7 million records to RACER in 2010. Respondents further state that one of four data feeds to RACER stopped working in September 2010 when an automatic, weekly data transfer mechanism malfunctioned. Respondents subsequently provided this data to RACER through a manual update process.

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

13. The Parties enter into this Stipulated Order to settle and completely resolve the Department’s claims for civil penalties for the violations alleged in Paragraph 9 above and the NOV, and to avoid further expense and litigation.

## **II. CIVIL PENALTY**

14. The Respondents shall pay to the State of New Mexico a civil penalty of fourteen thousand, six hundred and twenty-five dollars (\$14,625.00) to resolve their liability for the violations alleged in Paragraph 9 above and the NOV. The Respondents 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, payable to the New Mexico Hazardous Waste Emergency Fund, and shall be sent to the Department at the following address:

New Mexico Environment Department  
Hazardous Waste Bureau  
c/o Mr. John Kieling, Acting Bureau Chief  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303

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

15. If the Respondents fail to make timely and complete payment, the 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**

16. Except as expressly provided in Section III.B (Covenants Not to Sue) below, 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 Consent Order, or this Stipulated Order. In any such action, the Respondents reserve the right to assert any defenses they may have.

17. Each requirement of this Stipulated Order is an enforceable requirement of the HWA within the meaning of section 74-4-10 of the HWA, and an enforceable requirement of RCRA within the meaning of section 7002(a)(1)(A) of RCRA.

#### **B. COVENANTS NOT TO SUE**

18. The Department covenants not to sue or take any administrative action against the Respondents for the violations of the HWA and the Consent Order alleged in Paragraph 10 above and the NOV. Such covenant applies only to civil liability.

19. The Respondents covenant not to sue the State of New Mexico for any claims arising

from the Department's 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 LANS 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:

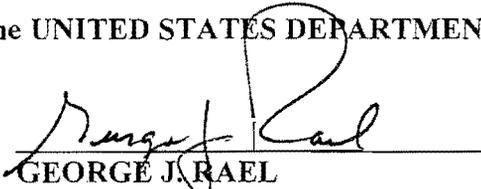
  
\_\_\_\_\_  
JAMES H. DAVIS, Ph.D.  
DIRECTOR  
RESOURCE PROTECTION DIVISION

Date:

Sept. 2, 2011

For the UNITED STATES DEPARTMENT OF ENERGY:

By:

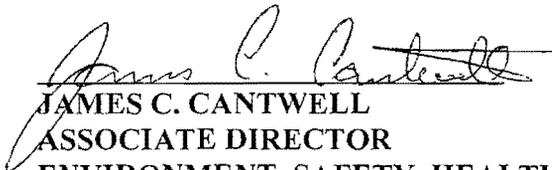
  
GEORGE J. RAEL

Date: 9/1/11

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

For the LOS ALAMOS NATIONAL SECURITY, LLC:

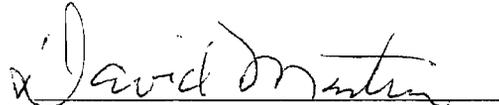
By:

  
JAMES C. CANTWELL

Date: 9/1/11

ASSOCIATE DIRECTOR  
ENVIRONMENT, SAFETY, HEALTH & QUALITY  
LOS ALAMOS NATIONAL SECURITY, L.L.C.  
LOS ALAMOS NATIONAL LABORATORY

Pursuant to section 20.1.5.601.B NMAC, this Settlement Agreement and Stipulated Final Order, agreed to by the Department and the Respondents, the United States Department of Energy and Los Alamos National Security, LLC, is hereby **APPROVED** as a **FINAL ORDER**.

  
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DAVID MARTIN  
SECRETARY OF ENVIRONMENT

Date: 9-9-11\_\_\_\_\_