



Office of the Laboratory Counsel
Legal Environment Safety & Health Group

P. O. Box 1663, Mail Stop A187
Los Alamos, New Mexico 87545
505-667-3766/Fax 505-665-4424
E-Mail: dwoitte@lanl.gov

Date: May 9, 2013
Refer To: LC-LESH:13-001

HAND DELIVERED

John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505



Re: Stipulated Final Order, No. HWB 13-03(CO)

Dear Mr. Kieling:

This letter transmits a copy of the "Stipulated Final Order" signed by the U.S. Department of Energy National Nuclear Security Administration and Los Alamos National Security, LLC, which resolves the Notice of Violation with Proposed Penalties, dated March 20, 2013.

Please return a file-stamped copy of the "Stipulated Final Order" to me and Lisa Cummings when it has been approved by Cabinet Secretary-Designate Flynn. We appreciate the assistance of you and your staff in reaching resolution of this matter.

Sincerely,

Deborah K. Woitte
LESH Group Leader

DKW:ss

Enclosure

cc: Jennifer L. Hower, NMED OGC
Steve Pullen, NMED HWB
Lisa Cummings, DOE/NNSA, A316
Pete Maggiore, DOE/NNSA, A316
Michael T. Brandt, ADESH, K491
Robert L. Dodge, WM-DO, K491
Mark P. Haagenstad, ENV-RCRA, K404
LC Records, A187
LC-LESH File



**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 13- 03 (CO)

STIPULATED FINAL ORDER

Pursuant to 20.1.5.600.B(2) NMAC, the New Mexico Environment Department (“Department”) and the United States Department of Energy (“DOE”) and Los Alamos National Security, LLC, (“LANS”), (collectively the “Respondents”) stipulate to resolve alleged violations specified in the Notice of Violation with Proposed Penalties (“NOV”) issued by the Department to the Respondents on March 20, 2013. The parties have agreed upon on the terms and conditions specified in this Stipulated Final Order.

BACKGROUND

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-1-1 to 74-4-14, and the Hazardous Waste Management Regulations (“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 co-operator of Los Alamos National Laboratory (the "Laboratory").
3. The Respondent LANS 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.
4. The Laboratory is a national research laboratory located in Los Alamos County, New Mexico. 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, Sections 74-4-3(H), (K), (P), and (T) of the HWA. The Laboratory is located approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe, occupying approximate 36 square miles on the Pajarito Plateau.
5. On November 30, 2010, the Department issued a Hazardous Waste Facility Permit (the "Permit"), No. NM0890010515, to DOE and LANS pursuant to NMSA 1978, Section 74-4-10 of the HWA, to store and treat hazardous waste at 24 locations at the Laboratory.
6. Beginning April 10, 2012, inspectors from the Department conducted a compliance inspection of the Laboratory. During the inspection the inspectors observed potential violations of the HWA, the HWMR, and the Permit.
7. At the conclusion of the inspection and in e-mail correspondence to the Respondents on June 14, 2012 and June 26, 2012, the Department requested information and supporting documentation associated with the potential violations. Responses to these requests were provided by the Respondents to the Department on June 15, 2012 and August 23, 2012.

8. As a result of the inspection and in consideration of the provided information and supporting documentation, on March 20, 2013 the Department issued the NOV to the Respondents. Also on March 20, 2013, the Department issued to the Respondents a separate correspondence, the Notice of Proposed Penalties, assessing a civil penalty of \$21,333 to settle the violations of the HWA and the Hazardous Waste Management Regulations alleged in the NOV.

9. On March 26, 2013 representatives of the Department and the Respondents met in Santa Fe to reach a settlement of the Department's claims for the alleged violations listed in the NOV.

ALLEGED VIOLATIONS

10. The Department alleged the following violations in the NOV:

(a) Failure to complete a weekly inspection form. This violation is associated with the weekly inspection form for Friday, July 22, 2011, associated with TA-54 – 231, Pad 9 CSU, Site ID # 1988, and LANL's failure to complete boxes # 15-22 for the subject date. The boxes are required to be completed during each daily inspection when waste is being handled. This is a violation of LANL Permit Condition ("PC") 2.6, Attachment Condition ("AC") E.1, and AC E.1 Part I - Instructions for Hazardous Waste Facility Inspection Record Form (Figure E-1).

(b) Failure to appropriately complete weekly inspection forms. This violation is associated with two weekly inspection forms for the weeks of June 3 and December 28, 2011. The time of inspection was not entered in Box # 30 for either form per the permit condition. This is a violation of LANL PC 2.6, AC E.1, and AC E.1 Part I - Instructions for Hazardous Waste Facility Inspection Record Form (Figure E-1).

(c) Failure to make a hazardous waste determination. This violation is associated with thirteen unlabeled 85-gallon overpack drums located at TA-54, Area G, west of Dome 375, outdoors. This is a violation of LANL PC 2.4.1 and AC C.2.2, and 20 NMAC 4.1.300, incorporating 40 C.F.R. 262.11.

(d) Failure to make a hazardous waste determination. This violation is associated with the fact that pharmaceutical wastes were not undergoing a hazardous waste determination at the Occupational Medicine Facility and were instead being recycled by a company named EXP. This is a violation of 20.4.1.300 NMAC, incorporating 40 C.F.R. 262.11.

COMPROMISE AND SETTLEMENT

11. The parties agree to combine the alleged violations in found in Paragraphs 10.a and 10.b into a single violation due to the similarity of the infractions, resulting in a total of three (3) alleged violations.

12. The parties enter into the Stipulated Final Order to settle and completely resolve the violations alleged in the NOV and to avoid further litigation and expense.

13. The Respondents admit the jurisdictional allegations of this Stipulated Final Order and consent to the relief specified in this Stipulated Final Order including the civil penalty. The Stipulated Final Order shall not be construed as an admission by the Respondents of the violations alleged in the NOV.

14. In compromise and settlement of the violations alleged in the NOV, the parties agree that the Respondents shall pay a civil penalty of \$21,333 to resolve violations alleged in the NOV. Respondents shall pay the civil penalty to the State of New Mexico within 30 days after the effective date of this Stipulated Final Order. Payment shall be made by certified check or other

guaranteed negotiable instrument, payable to the “*State of New Mexico- Hazardous Waste Emergency Fund*”, and shall be sent to the Department at the following address:

Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505

15. Payment of the civil penalty shall be accompanied by a transmittal letter referencing this Stipulated Final Order.
16. If the Respondents fail to make timely and complete payments, the Respondents shall pay interest on the outstanding balance at a rate established for judgments and decreed under NMSA 1978, § 56-8-4.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

17. Except as provided in Paragraph 19 (Covenants Not To Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit; for any past, present or future violation not addressed in the NOV. In any such action, Respondents reserve the right to assert any defenses that they may have.
18. The Department retains its right to enforce this Order by administrative or judicial action, and Respondents reserve the right to assert any defenses that they may have.
19. In the event that the Department elects to file a judicial action to enforce this Stipulated Final Order, the Department shall file such action in the First Judicial District Court of Santa Fe

County, New Mexico. The Respondents reserve the right to petition for removal of such an action to federal district court. If the Respondents choose to not petition for the removal of such an action to federal district court, the Respondents will not challenge that jurisdiction or venue lies with the First Judicial District Court of Santa Fe County, New Mexico.

COVENANTS NOT TO SUE

20. The Department covenants not to sue or take any administrative or civil action against the Respondents under the HWA, HWMR, and Permit for any of the facts or violations alleged in the NOV. This covenant not to sue extends to DOE and its successor agencies, and to LANS and its respective officers, agents, successors, and assigns and does not extend to any other person.

21. Respondents covenant not to sue the State of New Mexico for any claims deriving from the NOV.

EFFECTIVE DATE

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

INTEGRATION

23. This Stipulated Final Order merges all prior written and oral communications between the Department and the Respondents concerning the subject matter of the Stipulated Final Order and contains the entire agreement between the Department and the Respondents.

BINDING EFFECT

24. This Stipulated Final Order shall be binding upon the Department and its successor agencies and shall be binding upon DOE and its successor agencies, and on LANS and its successors as operators of the Laboratory.

AUTHORITY OF SIGNATORIES

25. The persons executing this Stipulated Final Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Stipulated Final Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Stipulated Final Order.

For the NEW MEXICO ENVIRONMENT DEPARTMENT

By: _____ Date: _____
TOM SKIBITSKI
DIRECTOR (ACTING)
RESOURCE PROTECTION DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY

By: Pete Maggiore Date: 5/9/13
PETE MAGGIORE
DEPUTY ASSISTANT MANAGER
ENVIRONMENTAL PROJECTS OFFICE
LOS ALAMOS FIELD OFFICE

For LOS ALAMOS NATIONAL SECURITY, LLC

By: Michael Brandt Date: 5/9/13
MICHAEL BRANDT
ASSOCIATE DIRECTOR
ENVIRONMENT, SAFETY, HEALTH, & QUALITY
LOS ALAMOS NATIONAL SECURITY, LLC

APPROVAL OF STIPULATED FINAL ORDER

Pursuant to 20.1.5.600B(2) NMAC, this Stipulated Final Order, agreed to by the Department and Respondents, DOE and LANS, is hereby APPROVED as a FINAL ORDER.

RYAN FLYNN
CABINET SECRETARY DESIGNATE OF ENVIRONMENT

Date: _____