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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 09-48 (CO)

SETTLEMENT AGREEMENT AND STIPULATED FINAL ORDER

The New Mexico Environment Department ("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) New Mexico Administrative Code ("NMAC"), stipulate to resolve the Notice of Violation issued by the Department to Respondents on May 22, 2009 (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 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 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 a 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. 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, 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 March 1, 2005, the Department, DOE, and The Regents of the University of California entered into the Administrative Compliance Order on Consent ("Consent Order") for environmental investigation and cleanup at the Laboratory pursuant to section 74-4-10 of the HWA and other authority. LANS as the successor to The Regents of the University of California is subject to the requirements of the Consent Order, as provided in section III.F of the Consent

Order. The Consent Order is an enforceable document as prescribed in section III.U of the Consent Order,

C. ALLEGED VIOLATION

8. On May 22, 2009, the Department issued a Notice of Violation (“NOV”) to the Respondents alleging the Respondents failed to implement the requirements set forth in the Department-approved *Work Plan to Plug and Abandon Mortandad Canyon Wells Test Well 8 and MCOBT-4.4*, dated October 31, 2007. Specifically the Department alleged that the Respondents’ failure to plug and abandon Mortandad Canyon well MCOBT-4.4 and submit the subsequent completion report in accordance with the schedule in the work plan is a violation of the requirements set forth in the Consent Order.

II. COMPROMISE AND SETTLEMENT

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

10. The Respondents admit the jurisdictional allegations of the NOV and consent to the relief specified in this Stipulated Order, including the civil penalty. This Stipulated Order shall not be construed as an admission by the Respondents of the violations alleged in the NOV and in paragraph 8.

11. In compromise and settlement of the violations alleged in the NOV, the parties agree that the Respondents shall pay a civil penalty of \$1,295,156.00 to resolve violations alleged in the NOV. The 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

12. Respondents shall provide written notification of the payment to the following address:

Charles F. Noble, Assistant General Counsel
Office of General Counsel
New Mexico Environment Department
1190 St. Francis Drive
Santa Fe, New Mexico 87505
Facsimile: (505) 827-1628

13. 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

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, the Consent Order, 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 the Respondents for the violations alleged in the NOV or paragraph 8 of this Stipulated Order.
16. The Respondents 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 the parties concerning the subject matter of this Stipulated Order and contains the entire agreement between the parties.

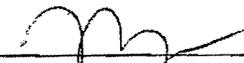
E. BINDING EFFECT

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

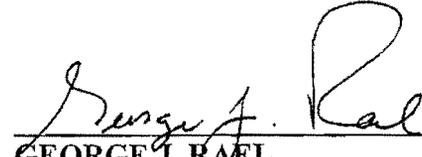
F. AUTHORITY OF SIGNATORIES

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: 12/1/09
MARCY LEAVITT
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY:

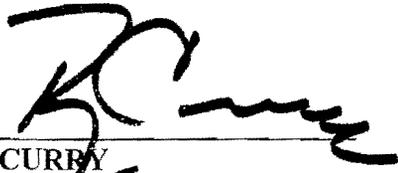
By:  Date: November 24, 2009
GEORGE J. RAEL
ASSISTANT MANAGER, ENVIRONMENTAL OPERATIONS
LOS ALAMOS SITE OFFICE
NATIONAL NUCLEAR SECURITY ADMINISTRATION

For the LOS ALAMOS NATIONAL SECURITY, LLC:

By:  Date: 11/24/2009
MICHAEL J. GRAHAM
ASSOCIATE DIRECTOR FOR ENVIRONMENTAL PROGRAMS
LOS ALAMOS NATIONAL SECURITY, LLC
LOS ALAMOS NATIONAL LABORATORY

FINAL ORDER

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



RON CURRY
SECRETARY OF ENVIRONMENT

Date: 11/30/09