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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 ~~06~~ 07-10 (CO)

COPY



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 ("DOE") and Los Alamos National Security, LLC ("LANS") (collectively the "Parties"). The Parties enter into this Stipulated Order to resolve alleged violations of the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to 74-4-14 (the "Act"), the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC, and the Respondents' Hazardous Waste Facility Permit ("Permit") for the Los Alamos National Laboratory in Los Alamos County, New Mexico (the "Laboratory"). The Department alleges that DOE and LANS, as successor to the Regents of the University of California ("UC"), violated the Hazardous Waste Management Regulations and the Permit by improperly storing hazardous remediation waste generated by the removal of sumps at the Laboratory.





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 DOE is a Department of the United States government. It is the owner and a co-operator of 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, effective June 1, 2006. Prior to June 1, 2006, UC was the co-operator of the Laboratory pursuant to a contract with DOE. LANS is the successor to UC.

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. Its operations include nuclear weapons design and testing, high explosives research, development, fabrication, and testing, chemical and material science research, electrical research and development, laser research and development, and photographic processing.

5. The Laboratory operations generate a variety of hazardous wastes and other solid wastes. The Laboratory also treats and stores hazardous waste, under the Hazardous Waste Facility Permit No. NM0890010515-1, issued by the Department.

6. Until it was demolished in January and February 2005, DOE and UC operated an explosives synthesis building in Technical Area 16 at the Laboratory, the TA-16-340 Building

Complex. The TA-16-340 Building Complex included two solid waste management units ("SWMU's"), SWMU 16-003(o) and SWMU 16-029(f). The first unit, SWMU 16-003(o), consisted of six concrete sumps and the outfall from Building 16-340. The second unit, SWMU 16-029(f), consisted of one concrete sump and a connected drain line.

7. During the operation of the TA-16-340 Building Complex, DOE and UC managed several listed and characteristic hazardous wastes at SWMU 16-003(o) and SWMU 16-029(f), including listed spent non-halogenated solvents (F005), reactive wastes (D003), waste containing toxic levels of barium (D005), and wastes containing toxic levels of 2,4-dinitrotoluene (D030).

8. In January and February 2005, DOE and UC conducted a demolition of the TA-16-340 Building Complex. Concurrently, DOE and UC conducted a remediation of SWMU 16-003(o) and SWMU 16-029(f) by excavating and removing the sumps and drain lines. DOE and UC placed the rubble from the demolition, together with the rubble from the remediation of the sumps on the ground adjacent to the demolition site. The total volume of rubble was approximately 8,000 cubic yards, of which approximately 20 cubic yards consisted of rubble from the sump remediation. Between February 1, 2005 and February 15, 2005, DOE and UC moved the rubble to Sigma Mesa at TA-60 and placed it in a pile.

9. On August 31, 2005, DOE and UC notified the Department that rubble from the TA-16-340 Building Complex demolition had been mixed with hazardous remediation waste from SWMU 16-003(o) and SWMU 16-029(f) and moved to Sigma Mesa.

10. During September 2005, DOE and UC conducted sampling of the rubble at Sigma Mesa to identify and quantify the hazardous constituents present.

11. Based on the results of the sampling, in a meeting on November 17, 2005, DOE and UC orally asked the Department to determine, under section 20.4.1.200 NMAC (incorporating 40 C.F.R. § 261.3(f)(2)), that given the extent of the residual contamination in the debris in the pile at Sigma Mesa, the debris was no longer contaminated with hazardous waste and did not need to be managed as hazardous waste. DOE and UC provided sampling and analytical data to the Department in support of the request.

12. On December 9, 2005, DOE and UC provided to the Department indexed sample data; an aerial photograph of the concrete debris at Sigma Mesa; a contour map outlining the location of the debris and indicating the sample grid and sampling locations in the debris; and a copy of the Data Quality Objectives developed for the September 2005 sampling event. On March 13, 2006, in response to a request by the Department, DOE and UC submitted to the Department for approval the engineering controls plan. On April 18, 2006, DOE and UC provided the Department additional information, including a description of the management of the remediation waste and the results of laboratory analysis of the waste.

13. On August 18, 2006, DOE and LANS, the new co-operator, submitted to the Department a written request for a determination under section 20.4.1.200 NMAC (incorporating 40 C.F.R. § 261.3(f)(2)) that given the extent of the residual contamination in the debris in the waste pile at Sigma Mesa, the debris was no longer contaminated with hazardous waste and did not need to be managed as hazardous waste.

14. On October 25, 2006, the Department sent a notice of violation letter ("NOV") to DOE and LANS. The NOV alleges two violations of the New Mexico Hazardous Waste Management Regulations and the Hazardous Waste Facility Permit:

a. The Respondents stored listed hazardous remediation waste in a staging pile at the TA-16-340 Building Complex from February 1, 2005 through February 15, 2005 without obtaining from the Department a staging pile designation subject to conditions, in violation of section 20.4.1.500 NMAC (incorporating 40 C.F.R. § 264.554(b)) of the regulations.

b. The Respondents placed listed hazardous remediation waste in a waste pile on Sigma Mesa without treating the waste to meet the standards for land disposal and without a permit for the waste pile, in violation of sections 20.4.1.800 NMAC (incorporating 40 C.F.R. part 268) and 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.10) of the regulations and section VIII.B.4(a) of the Permit.

15. On October 25, 2006, the Department sent a separate letter to DOE and LANS proposing to settle the Department's claims for civil penalties resulting from the violations. The letter included a civil penalty calculation.

16. The Respondents do not admit the allegations in Paragraph 14 above.

17. On December 8, 2006, and on February 13, 2007, representatives of the Department and the Respondents met in Santa Fe to attempt to reach a settlement of the Department's claims for civil penalties for the alleged violations.

18. The Parties enter into this Stipulated Order to settle and completely resolve the Department's claims for the violations alleged in Paragraph 14 above, and to avoid further expense and litigation.

II. CIVIL PENALTY

19. The Respondents shall pay to the State of New Mexico a civil penalty of one hundred and nineteen thousand, eight hundred and forty-five dollars (\$119,845.00) to resolve their liability

for the violations alleged in Paragraph 14 above. 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. James Bearzi, 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.

20. 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. NOTICE OF DEMOLITION ACTIVITIES

21. The Respondents shall provide the Department with the following information:

a. Within thirty (30) days after the effective date of this Stipulated Order, the Respondents shall submit to the Department a list of buildings, and other fixed structures, that may contain hazardous material scheduled to be demolished during the remainder of federal fiscal year 2007 (April 1, 2007 through September 30, 2007).

b. On or before September 30 of each year from 2007 until the effective date of the final renewed hazardous waste facility permit for the Laboratory at which time the permit conditions will control, the Respondents shall submit to the Department a list of buildings and other

fixed structures that may contain hazardous material scheduled to be demolished in the following federal fiscal year (October 1 through September 30).

c. On or before the last day of each quarter (December 31, March 30, and June 30), the Respondents shall update the list to include any additional buildings and fixed structures that may contain hazardous material scheduled for demolition, or shall notify the Department in writing that no such additional demolitions have been scheduled.

d. Each list shall be presented in the form of a table with additional information attached, as available. The table shall contain the following general information for each building or fixed structure that may contain hazardous material to be demolished, to the extent it is available at the time it is submitted: (1) the Technical Area (TA) and building number; (2) a brief statement of current and historic uses of the building or fixed structure; (3) the approximate dates of operation of the building or structure; (4) a list of any solid waste management units (SWMU) or areas of concern (AOC) within fifty (50) feet of the footprint of the building or fixed structure; (5) the categories (e.g., chemical residues, RCRA metals, asbestos, high explosives residues) of potential wastes expected to be present in the building or fixed structure; (6) the date, if available, or the quarter in which the demolition is scheduled to begin or anticipated to begin; and (7) any buildings or fixed structures identified in the previous fiscal year that were not demolished. The attachment shall describe the processes or conditions that may result in the presence of hazardous material in each building or fixed structure. The list will not identify any maintenance or renovation activities, or any trailer, transportable building, or building which consists of fabric supported by a frame, or any building that will be demolished pursuant to closure or corrective action activities under the HWA, as the

Department approves those activities pursuant to the Hazardous Waste Facility Permit or the Administrative Order on Consent dated March 1, 2005.

e. Based on the list, the Department may identify in writing those buildings or fixed structures for which it requires notice. For each identified building and fixed structure, the Respondents shall submit to the Department a notice of the commencement of demolition at least 30 days prior to the start of such demolition.

f. For each building and fixed structure identified under subparagraph 21.e above, if a demolition completion report is prepared, the Respondents shall provide to the Department a copy of the report within 30 days after such final report is written.

22. The scope and schedule of demolition activities identified in the list and table provided to the Department under Paragraph 21 above are not subject to approval by the Department, unless otherwise provided by law including a regulation, permit, or order.

23. By agreeing to provide the Department with the information described in Paragraph 21, the Respondents do not concede that the Department has the authority to include such requirements in the renewed hazardous waste facility permit, and they reserve the right to challenge any such requirements.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

24. Except as expressly provided in Paragraph 25 of Section IV.B (Covenants Not to Sue), 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 Hazardous Waste Facility 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

25. The Department covenants not to sue or take any administrative action against DOE or LANS for the violations of the HWA, the Hazardous Waste Management Regulations, and the Hazardous Waste Facility Permit alleged in Paragraph 14 above, or in the October 25, 2006 NOV. Such covenant applies only to civil liability.

26. DOE and LANS covenant not to sue the State of New Mexico for any claims arising from the October 25, 2006 NOV.

C. LIABILITY

27. The Respondents shall assume all costs and liabilities incurred in performing all obligations under this Stipulated Order. The Department, on its own behalf and on behalf of the State of New Mexico, does not assume any liability for the Respondents' performance of any obligation under this Stipulated Order.

28. The Respondents shall be jointly and severally liable for their obligations under this Stipulated Order.

D. EFFECTIVE DATE

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

E. INTEGRATION

30. 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.

F. BINDING EFFECT

31. 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.

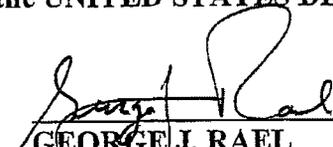
G. AUTHORITY OF SIGNATORIES

32. 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: 4-10-07
JON GOLDSTEIN
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY:

By:  _____ Date: April 4, 2007
GEORGE J. RAEL
ASSISTANT MANAGER, ENVIRONMENTAL OPERATIONS
LOS ALAMOS SITE OFFICE
NATIONAL NUCLEAR SECURITY ADMINISTRATION

For the LOS ALAMOS NATIONAL SECURITY, LLC:

By: 

Date: 4 April 2007

RICHARD S. WATKINS
ASSOCIATE DIRECTOR FOR ENVIRONMENT, SAFETY,
HEALTH & QUALITY
LOS ALAMOS NATIONAL SECURITY, LLC
LOS ALAMOS NATIONAL LABORATORY

Pursuant to 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.


RON CURRY
SECRETARY OF ENVIRONMENT

Date: 4/10/07

