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RON CURRY
SECRETARY

DERRITH WATCHMAN-MOORE
DEPUTY SECRETARY

TRACY HUGHES
GENERAL COUNSEL

February 6, 2007

BY OVERNIGHT MAIL

Lisa Cummings
United States Department of Energy
National Nuclear Security Administration
Los Alamos Site Office
528 35th Street
Los Alamos, New Mexico 87544

Deborah K. Woitte
Los Alamos National Security, LLC
1650 Trinity Drive
Building 760
Los Alamos, New Mexico 87544

Re: Proposed Settlement Agreement
Notice of Violation dated October 25, 2006



Dear Lisa and Deb:

Enclosed is a proposed Settlement Agreement and Stipulated Final Order to resolve the claims of the New Mexico Environment Department (Department) for civil penalties for violations of the New Mexico Hazardous Waste Management Regulations, and the Hazardous Waste Facility Permit for Los Alamos National Laboratory, as described in the Notice of Violation that the Department issued to the United States Department of Energy (DOE) and Los Alamos National Security, LLC (LANS) on October 25, 2006. The violations arose from the demolition of the TA-16-340 Building Complex at Technical Area 16.

I am also today sending a copy of the document by electronic mail to you and your clients.

If the Settlement Agreement as currently drafted is acceptable to your clients, please have the document signed and returned to me. Otherwise, you can provide me with comments by electronic mail, or by telephone. My telephone number is (505) 827-2985. We are scheduled to meet on this matter on Tuesday, February 13, 2007, at 8:30 a.m., in Santa Fe. If

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Letter to Lisa Cummings and Deborah K. Woitte
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we can resolve the issues, if any, that you have with the proposed settlement agreement before that time, the meeting will not be necessary. Thank you for your cooperation on this matter.

Sincerely,



Charles de Saillan
Assistant General Counsel

Enclosure

cc: James Bearzi, Hazardous Waste Bureau
Art Vollmer, Hazardous Waste Bureau
Kathryn Chamberlain, Hazardous Waste Bureau

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)	
DEPARTMENT,)	
)	
Complainant,)	
)	NO. HWB 06-
v.)	
)	
UNITED STATES DEPARTMENT)	
OF ENERGY and)	
LOS ALAMOS NATIONAL)	
SECURITY, LLC,)	
)	
Respondents.)	
<hr/>)	

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 violated the Hazardous Waste Management Regulations and the Permit by improperly storing hazardous remediation waste generated by the demolition of a building and associated sumps and drains 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 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.

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, the Respondents 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

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

9. On August 31, 2005, the Respondents 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. On August 18, 2006, the Respondents submitted to the Department a 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 is no longer contaminated with hazardous waste and does not need to be managed as hazardous waste.

11. 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. § 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.

12. 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.

13. 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.

14. The Parties enter into this Stipulated Order to settle and completely resolve the Department’s claims for the violations alleged in Paragraph 11 above, and to avoid further expense and litigation.

II. CIVIL PENALTY

15. DOE and LANS 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 11 above. DOE and LANS 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, 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.

16. If DOE and LANS fail to make timely and complete payment, DOE and LANS shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

17. DOE and LANS shall be jointly and severally liable for their obligations under this Stipulated Order.

III. NOTICE OF DEMOLITION ACTIVITIES

18. DOE and LANS shall provide the Department with the following information:

a. On or before March 30, 2007, DOE and LANS shall submit to the Department a list of buildings and other structures scheduled to be demolished for the remainder of federal fiscal year 2007 (April 1, 2007 through September 30, 2007).

b. On or before July 30 of each year from 2007 until the final renewed hazardous waste facility permit is issued for the Laboratory at which time the permit conditions will control, DOE and LANS shall submit to the Department a list of buildings and other structures scheduled to be demolished in the following federal fiscal year (October 1 through September 30).

c. DOE and LANS shall notify the Department of any additions to or deletions from the list of buildings and other structures scheduled to undergo demolition at least 45 days prior to the start (for additions), or previously scheduled start (for deletions), of demolition activities.

d. Each list shall be presented in the form of a matrix that contains the following general information for each building or other structure to be demolished, to the extent it is available at the time of submittal: (1) the Technical Area (TA) and building number; (2) a brief statement of current and historic uses of the building or 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 structure; (5) the categories (e.g., discarded chemicals, solvent residues) and the EPA waste codes of wastes expected to be present in the building or structure; (6) information on any asbestos in the building or structure, including a description of the asbestos material, its location, and its estimated volume; (7) the date or approximate date on which the demolition is scheduled to begin or anticipated to begin; and (8) any buildings or structures identified in the previous fiscal year that were not demolished. The matrix will not identify any building or structure that will be demolished pursuant to closure or corrective action under the HWA, as the Department receives notice of 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 and other structures for which it requires additional information. For each identified building and structure, DOE and LANS shall submit to the Department a summary of the proposed site assessment activities, including: (1) detailed site plans; (2) proposed sampling locations and methods; (3) analytical suites; and (4) waste management plans. DOE and LANS shall submit each summary at least 45 days prior to the start of demolition activities.

19. Within 90 days of completion of demolition activities for a building or other structure, DOE and LANS shall submit to the Department a report summarizing all demolition activities, and including a description of waste management activities, a map showing the location of all samples of soil, water, sediment, or waste material collected for analysis, and tables with a synopsis of all analytical results.

20. The Department may require DOE and LANS to conduct additional activities, such as confirmatory sampling and analysis, after completion of demolition activities.

21. On or before March 30, 2007, DOE and LANS shall also submit to the Department a list of buildings that have been vacated and are no longer in use. DOE and LANS shall update this list on or before July 30 of each year from 2007 until the final renewed hazardous waste facility permit is issued for the Laboratory.

22. The scope and schedule of demolition activities identified in the list and matrix submitted to the Department under Paragraph 18 above are not subject to approval by the Department, unless otherwise provided by law including a regulation, permit, or order. Sampling and analysis to determine the extent of environmental contamination, and waste management activities, associated with demolition are subject to Department approval.

IV. OTHER TERMS AND CONDITIONS

A. ENFORCEMENT

23. Except as expressly provided in Paragraph 24 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

24. 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 11 above, or in the October 25, 2006 NOV. Such covenant applies only to civil liability.

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

C. WAIVER OF STATE LIABILITY

26. DOE and LANS 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.

D. EFFECTIVE DATE

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

E. INTEGRATION

28. 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

29. 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

30. 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: _____
CINDY PADILLA
DIRECTOR
WATER AND WASTE MANAGEMENT DIVISION

For the UNITED STATES DEPARTMENT OF ENERGY:

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

For the LOS ALAMOS NATIONAL SECURITY, LLC:

By: _____

Date: _____

**ANDREW K. PHELPS
ASSOCIATE DIRECTOR FOR ENVIRONMENTAL PROGRAMS
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: _____