

TA-73

 ENTERED

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 07- 03

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 an administrative compliance order, the Compliance Order on Consent (“Consent Order”), dated March 1, 2005, entered pursuant to section 74-4-10 of the New Mexico Hazardous Waste Act (“HWA”) and other authority. The Department alleges that DOE and LANS violated the Consent Order by improperly disposing of potentially hazardous debris while conducting the cleanup of an ash and debris pile at the Los Alamos National Laboratory in Los Alamos County, New Mexico (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 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. 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 is a facility that treats and stores hazardous waste under Hazardous Waste Facility Permit No. NM0890010515-1. Management of hazardous wastes and solid wastes at the Laboratory has resulted in the release of hazardous waste and hazardous waste constituents, and other solid wastes into the environment.

6. Pursuant to sections 74-4-4(A)(5)(h) and 74-4-10(E) of the HWA, 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.

7. On March 1, 2005, the Department, DOE, and the Regents of the University of California entered into the Consent Order pursuant to section 74-4-10(A) of the HWA. LANS is the successor to the Regents of the University of California ("UC") and is subject to the requirements of the Consent Order, as provided in section III.F of the Consent Order. The Consent Order provides for the investigation and cleanup of environmental contamination at the Laboratory.

8. The Consent Order requires the Respondents, among other things, to investigate and clean up several specified solid waste management units at the Laboratory. One such solid waste management unit, known as "SWMU 73-002," is an inactive incinerator and a pile of ash and debris from its operation at Technical Area-73, located adjacent to the Los Alamos County Airport. Section VI.L.2 of the Consent Order requires the Respondents to investigate and fully characterize the contamination at SWMU 73-002. The Respondents were required to submit to the Department for approval an investigation work plan addressing SWMU 73-002. Upon Department approval, the work plan was to be incorporated by reference into the Consent Order and made an enforceable part thereof.

9. In September 2005, DOE submitted to the Department a proposed work plan for SWMU 73-002, entitled *Corrective Action Work Plan for Solid Waste Management Unit (SWMU 73-002) Incinerator Ash Removal*. The proposed work plan stated that debris "that has been in direct contact with the ash will be managed with the ash" and disposed of at the EnviroCare of Utah

facility. It also stated that debris “not associated with the ash” would be disposed of in “an industrial landfill.”

10. The Department approved the work plan by letter dated September 30, 2005.

11. In November 2005, DOE implemented the approved work plan and initiated a cleanup of SWMU 73-002. DOE and LANS assert that UC, then the operator of the Laboratory, was not involved in implementation of the approved work plan. Implementation of the work plan occurred prior to the transfer of the contract to LANS. On November 11, 14, and 16, 2005, DOE sent five shipments of debris from SWMU 73-002 to the Los Alamos County municipal landfill for disposal.

12. The Department first became aware of the disposal during a telephone conference with DOE representatives on December 16, 2005. After the meeting, by letter dated December 19, 2005, the Department requested any and all information pertaining to the final disposition of remediation waste from SWMU 73-002 corrective action, including manifests and other shipping documents. In its January 18, 2006 response, DOE acknowledged that disposal of the debris “was not in accordance with the approved work plan, and was due to human error.”

13. On July 12, 2006, the Department sent a notice of violation letter (“NOV”) to DOE and LANS. The NOV alleges that the disposal of the debris from SWMU 73-002 at the Los Alamos County municipal landfill was a violation of the approved work plan, and therefore of the Consent Order and the HWA.

14. On July 12, 2006, the Department sent a 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.

15. On August 24, 2006 and September 21, 2006, representatives of the Department and DOE met in Santa Fe to attempt to reach a settlement of the Department's claims for civil penalties for the alleged violations.

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

## II. CIVIL PENALTY

17. The Respondents shall pay to the State of New Mexico a civil penalty of fifty thousand, ninety-five dollars (\$50,095.00) to resolve their liability for the violations alleged in Paragraph 13 above. The Respondents shall pay the civil penalty to the State of New Mexico within forty-five (45) 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 87505-2567

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

18. 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.

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

### **III. OTHER TERMS AND CONDITIONS**

#### **A. ENFORCEMENT**

20. Except as expressly provided in Paragraph 21 of Section III.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 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**

21. The Department covenants not to sue or take any administrative action against DOE or LANS for the violations of the HWA and the Consent Order alleged in Paragraph 13 above, or in the July 12, 2006 NOV. Such covenant applies only to civil liability.

22. DOE and LANS covenant not to sue the State of New Mexico for any claims arising from the July 12, 2006 NOV.

#### **C. WAIVER OF STATE LIABILITY**

23. 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.

#### **D. EFFECTIVE DATE**

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

#### **E. INTEGRATION**

25. 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**

26. 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.

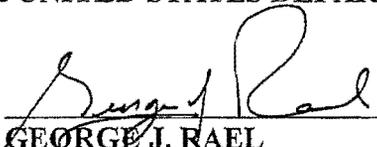
**G. AUTHORITY OF SIGNATORIES**

27. 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.

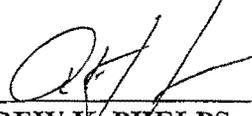
**For the NEW MEXICO ENVIRONMENT DEPARTMENT:**

By:  Date: Feb. 23, 2007  
CINDY PADILLA  
for DIRECTOR  
WATER AND WASTE MANAGEMENT DIVISION

**For the UNITED STATES DEPARTMENT OF ENERGY:**

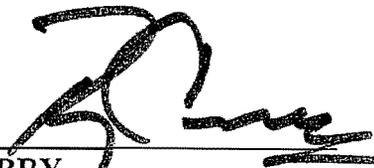
By:  Date: Feb. 7, 2007  
GEORGE J. RAEL  
ASSISTANT MANAGER, ENVIRONMENTAL OPERATIONS  
LOS ALAMOS SITE OFFICE  
NATIONAL NUCLEAR SECURITY ADMINISTRATION

For the LOS ALAMOS NATIONAL SECURITY, LLC:

By:   
ANDREW K. PHELPS  
ASSOCIATE DIRECTOR FOR ENVIRONMENTAL PROGRAMS  
LOS ALAMOS NATIONAL SECURITY, LLC  
LOS ALAMOS NATIONAL LABORATORY

Date: 21 February 2007

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**.

  
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RON CURRY  
SECRETARY OF ENVIRONMENT

Date: 2/23/07