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**State of New Mexico
ENVIRONMENT DEPARTMENT**



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RON CURRY
SECRETARY

July 12, 2006

**CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY**

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Los Alamos, NM 87544

Mr. Richard S. Watkins, Associate Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
4200 West Jemez Road, Suite 400
Los Alamos, NM 87545

**SUBJECT: SETTLEMENT OFFER FOR NOTICE OF VIOLATION
LOS ALAMOS NATIONAL LABORATORY,
EPA ID NM0890010515**

Messrs. Wilmot and Watkins:

On this date, by separate letter, the New Mexico Environment Department (Department) issued a Notice of Violation (NOV) to the United States Department of Energy and Los Alamos National Security, LLC (the Respondents) for unlawful disposal of debris from the ash pile on Sigma Mesa (SWMU 73-002). On November 11, 14, and 16, 2005, the Respondents sent five shipments of debris from the ash pile to the Los Alamos County municipal landfill for disposal, contrary to the express provisions of the approved work plan. The Department had approved the work plan pursuant to the March 1, 2005 Compliance Order on Consent (Order) issued under the authority of New Mexico Hazardous Waste Act (HWA), NMSA 1978, § 74-4-10. The work plan was incorporated by reference and made an enforceable part of the Order.

Pursuant to the HWA, the Department may assess a civil penalty of up to \$25,000 per day for each violation of a compliance order. Accordingly, the Department is proposing to assess a civil penalty



Messrs. Wilmot and Watkins

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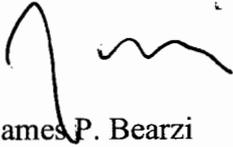
of \$88,930.00 to settle its claims for penalties for the violations described in the NOV. The proposed civil penalty is assessed as follows:

1. Failure to meet requirements set forth in the approved *Corrective Action Work Plan for Solid Waste Management Unit (SWMU) 73-002 (Incinerator Ash Removal)*, dated September 6, 2005, in accordance with Section VI.L.2 of the Compliance Order on Consent, dated March 1, 2005. (5 counts) \$ \$88,930

A more detailed Penalty Calculation worksheet is enclosed herewith.

The Department requests a meeting with appropriate representatives of the Respondents for the purposes of negotiating a settlement relating to the Notice of Violation. To explore the possibility of settlement in this manner, contact me directly at 428-2512.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:kmc

cc: K. Chamberlain, NMED HWB
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V. George, ENVP-DO, MS J978
A. Phelps, ENV, MS T002
J. Ordaz, DOE LASO, MS A316
N. Quintana, LANL E/ER, MS M992
file: Reading and LANL '06 (SWMU 73-002)

LANL 06 VIOLATIONS
DRAFT PENALTY NARRATIVE
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Violation #1: The Respondents failed to meet the requirements set forth in the Notice of Disapproval (NOD) (July 19, 2005), in the 2nd NOD (September 6, 2005), and the Approved *Corrective Action Work Plan for Solid Waste Management Unit (SWMU) 73-002 (Incinerator Ash Removal)*, dated September 2005, in accordance with Sections VI.L.2 and III.M.2 of the Order.

1. Gravity-Based Penalty:

(a) Potential for Harm: Moderate –The debris waste disposal at the Los Alamos County Municipal Landfill was in contact or may have been in contact at one time with the ashpile and should have been disposed at EnviroCare of Utah, a permitted hazardous waste disposal facility, in accordance with the work plan. Failure to implement approved waste disposal requirements could result in a potential risk of exposure of humans or other environmental receptors to hazardous constituents in the waste. The Department approved the revised work plan with specific conditions placed on the waste destined for off-site disposal because of numerous hazardous constituents were identified in the waste at SWMU 73-002 and the significant variations in the composition of the waste. The Department's work plan review and approval authority under the March 1, 2005 Consent Order (Order) is an important part of the regulatory process to ensure that the waste is properly disposed in a manner that is protective of human health and the environment. By not following the approved work plan, the Respondents' actions have a significant adverse effect on statutory or regulatory purposes or procedures for implementing the RCRA program.

(b) Extent of Deviation: Moderate - Failure to implement approved waste disposal requirements is a significant deviation from the Order and the regulations. Disposal requirements are a key element in waste management program and each disposal facility is permitted to accept specific types of waste (RCRA hazardous, MLLW, LLW, solid waste, etc.). Waste disposal requirements are necessary to ensure that facilities are handling appropriate types of waste. The Department approved the work plan based on the requirements imposed on the designated facility. By sending the debris waste to a municipal landfill, which is subject to less stringent requirements than Envirocare, the Respondents deviated significantly from the conditions of the approved work plan.

(c) Counts: 5: The Respondents sent five shipments of debris to the Los Alamos County municipal landfill on November 11, 14, and 16, 2005 contrary to the approved work plan.

2. **Multiday Penalty:** Each count was considered a single-day event. Therefore, no multiday penalty is applied in this case.
3. **Good Faith:** While the Respondent reported the violation to the Department and stopped further shipments to the municipal landfill, the Department did not apply a good faith adjustment in this case because the Respondent should have been fully aware of the conditions of the work plan, which was only two months old.

LANL 06 VIOLATIONS
DRAFT PENALTY NARRATIVE
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4. **Willfulness/Negligence:** Substantial negligence – The Respondents must at all times be fully aware of their obligation under the Consent Order and the approved Work Plan. The violation occurred within two months of the Department’s approval of the work plan. For these reasons, the Department is increasing the penalty by 15%.
5. **History of Noncompliance:** Minor history of noncompliance with same or similar regulations – From 1993 through 2005, the Department issued 14 compliance orders against the Respondents (93-01, 93-02, 93-03, 93-04, 94-09, 94-12, 95-03, 95-08, 98-02, 98-03, 99-01, 99-03, 04-01, 04-02) and 6 notices of violation (5/91, 7/91, 7/96, 3/03, 4/01, 4/05) that sought compliance with the Hazardous Waste Management Regulations (HWMR). Most of this enforcement actions were settled through various administrative orders of consent.

The violations cited in the enforcement actions set forth above included a violation similar to the subject violation. In 1995, the Department cited the Respondents for not disposing of waste asphalt from a construction site as hazardous as stipulated in a 1994 approval for construction at TA-54 Area L. Instead the Respondents disposed of the material in TA-54 Area G and the Los Alamos County Landfill (Compliance Order 98-03).

For these reasons, a 15% increase will be added to the penalty.

6. **Economic Benefit:** The Respondents took five shipments of waste to the Los Alamos County Landfill rather than EnviroCare of Utah, as specified in their approved work plan. The Department has made the following assumptions, 1) each shipment of waste was equivalent to a full roll-off bin, 2) that a roll-off bin is equivalent to ~20 yards, 3) the debris would have been considered “regular debris” rather than “over-sized” which would have resulted in lower disposal costs at EnviroCare, and 4) the waste was considered low level radioactive waste (LLRW). Based on the above assumptions and pricing information provided by Jose Jerez of EnviroCare of Utah and Randy Withrow of Cast Transportation, the Department has calculated the following economic benefit:

- 5, full (~20 yards) roll-off bins = 100 yards
 - 100 yards = 2,700 ft³ (1 yard = 27 ft³)
 - \$14.70 per ft³ of “regular” LLRW debris disposal
 - 2,700 ft³ x \$14.70 = \$36,690.00
 - Transportation (including a 20% fuel surcharge)= \$4,200
 - Disposal (\$36,690) + Transportation (\$4,200)= \$40,890
- Total Economic Benefit: \$40,890 - \$709.66 (Cost of disposal at the Municipal landfill) = **\$40,180.34**

PENALTY CALCULATION
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Violation # 1

Facility: Los Alamos National Laboratory

Date violation discovered December 16, 2005

Citation/Violation: Failure to meet requirements set forth in the approved *Corrective Action Work Plan for Solid Waste Management Unit (SWMU) 73-002 (Incinerator Ash Removal)*, dated September 6, 2005, in accordance with Section VI.L.2 of the Compliance Order on Consent, dated March 1, 2005 (5 counts)

Location: SWMU 73-002 (Incinerator Ashpile)

PENALTY AMOUNT:

1.	Gravity based penalty from matrix	\$	7,500
	(a) Potential for harm		moderate
	(b) Extent of deviation		moderate
	(c) Number of counts		5
2.	Multitple count adjustment (multiply line 1 by number of counts)	\$	37,500
3.	Multiday penalty from matrix	\$	-
4.	Days of noncompliance (or other appropriate number)		
5.	Multiday adjustment (multiply line 4 minus 1 by line 3)	\$	-
6.	Add line 2 and line 5	\$	37,500
7.	Percent increase/decrease for good faith		0%
8.	Percent increase for willfulness/negligence		15%

PENALTY CALCULATION
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9.	Percent increase for history of noncompliance		15%
10.	Total percentage (add lines 7 through 9)		30%
11.	Multiply line 6 by line 10	\$	11,250
12.	Economic benefit penalty	\$	40,180
13.	Add lines 6, 11, and 12 for total penalty amount for this violation	\$	88,930
14.	Statutory maximum penalty	\$	125,000