

STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT

NEW MEXICO ENVIRONMENT )  
DEPARTMENT, )  
Complainant, )  
 )  
v. )  
 )  
WHITE SANDS MISSILE RANGE )  
 )  
EPA ID #: NM2750211235 )  
Respondent. )  
\_\_\_\_\_ )

NO. HWB-17- 16



**STIPULATED FINAL ORDER**

The New Mexico Environment Department (“Department”) and White Sands Missile Range (“WSMR” or “Respondent”), pursuant to 20.1.5.600.B(2) NMAC, stipulate to resolve the alleged violations specified in the Notice of Violation (“NOV”) issued by the Department to Respondent on October 31, 2016. The parties have agreed on the terms and conditions specified in this Stipulated Final Order (“Order”).

**BACKGROUND**

1. The Department is an agency of the executive branch of the State of New Mexico pursuant to NMSA 1978, § 9-7A-4. The Department is authorized to administer and enforce the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-1-1 to -14, and the Hazardous Waste Management Regulations (“HWMR”), 20.4.1 NMAC, including assessing civil penalties for violations thereof.
2. Respondent WSMR operates a government-owned facility located at HWY 70E, White Sands Missile Range, New Mexico (“Facility”). The Facility holds a Treatment, Storage, and Disposal Facility (“TSDF”) Permit, EPA I.D. Number NM2750211235 (“Permit”).

3. Beginning on April 11, 2016, NMED conducted a hazardous waste compliance evaluation inspection at the Facility. During the inspection, Department inspectors observed potential violations of the HWA and the HWMR.
4. As a result of the inspection and in consideration of the documentation and information provided, the Department issued an NOV to Respondent on October 31, 2016 (the "NOV").

#### **ALLEGED VIOLATIONS**

5. The Department alleged the following violations in the NOV:
  - a) Failure to post the evacuation plan specified in Permit Attachment 3. This is a violation of 20.4.1.500 NMAC, incorporating 40 CFR §264.52(f); Attachment Condition 3.7.9.
  - b) Failure to make a hazardous waste determination. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.
  - c) Failure to establish a satellite accumulation area ("SAA") at or near the point of generation. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR §262.34(c)(1).  
NMED has agreed to rescind this violation.
  - d) Failure to conduct initial training for facility personnel. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR §265.16(a)(1).
  - e) Failure to conduct annual hazardous waste training for facility personnel. This is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.16(c)(1).
  - f) Failure to document the duties of facility personnel assigned to each position in the written job descriptions for those positions. This is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.16(d)(2).
  - g) Failure to obtain a permit to treat hazardous waste in SAAs. This is a violation of 20.4.1.900 NMAC, incorporating 40 CFR § 270.1(c).

h) Failure to manage universal waste lamps in a way that prevents releases. This is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.33(d).

i) Failure to clearly label or mark universal waste lamps with words that identify the contents. This is a violation of 20.4.1.1000 and 1001.B. NMAC, incorporating 40 CFR § 273.34(e).

j) Failure to demonstrate the length of time that universal waste lamps have been accumulated. This is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.35(c).

### **COMPROMISE AND SETTLEMENT**

6. All actions required to maintain or restore Respondent's compliance have been completed.

7. Respondent does not admit to any of the allegations in the NOV. To avoid further legal proceedings, the Department and Respondent agree to the terms and conditions in this Stipulated Final Order in order to resolve the alleged violations in the NOV.

8. Respondent admits the jurisdictional allegations of this Stipulated Final Order and consents to the relief specified in the Stipulated Final Order including the civil penalty.

9. In compromise and settlement of the alleged violations in the NOV, the parties agree that Respondent shall owe a civil penalty of \$27,865.00. Payments shall be made by certified check or other guaranteed negotiable instrument, payable to the "State of New Mexico- Hazardous Waste Emergency Fund," and shall be sent to the Department at the following address:

Bureau Chief  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505

10. Payments of the civil penalty shall be accompanied by a transmittal letter referencing this Stipulated Final Order.

11. If Respondent fails to make timely and complete payments of the civil penalty, Respondent shall pay interest on the outstanding balance at the rate established for judgments and decrees under NMSA 1978, § 56-8-4.

### **OTHER TERMS AND CONDITIONS**

#### **ENFORCEMENT**

12. Except as provided in Paragraph 20 (Covenants Not To Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit, for any past, present or future violations not addressed in the NOV. In any such action, Respondent reserves the right to assert any defenses that it may have.

13. The Department retains its right to enforce this Order by administrative or judicial action, and Respondent reserves the right to assert any defenses that it may have.

14. In the event that the Department elects to file a judicial action to enforce this Stipulated Final Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. Respondent agrees not to challenge jurisdiction or venue in such an action.

#### **COVENANTS NOT TO SUE**

15. The Department covenants not to sue or take any administrative or civil action against Respondent under the HWA, HWMR or Permit for any of the facts or violations alleged in this Stipulated Final Order. This covenant not to sue extends to WSMR and its respective officers, directors, agents, employees, successors, and assigns and does not extend to any other person.

This Covenant does not extend to future violations of the same HWA, HWMR or Permit requirements.

16. Respondent covenants not to sue the State of New Mexico for any claims deriving from the NOV.

#### **EFFECTIVE DATE**

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

#### **INTEGRATION**

18. This Stipulated Final Order merges all prior written and oral communications between the Department and the Respondent concerning the subject matter of the Stipulated Final Order and contains the entire agreement between the Department and the Respondent.

#### **BINDING EFFECT**

19. This Stipulated Final Order shall be binding upon the Department and its successor agencies and shall be binding upon Respondent and on its successors.

#### **AUTHORITY OF SIGNATORIES**

20. The persons executing this Stipulated Final Order represent that they have the requisite authority to bind either the Department or the Respondent, as appropriate, to this Stipulated Final Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondent to this Stipulated Final Order.

For the NEW MEXICO ENVIRONMENT DEPARTMENT.

By: JCB  
J.C. BORREGO  
ACTING DIRECTOR  
RESOURCE PROTECTION DIVISION

Date: August 14, 2017

For: **WHITE SANDS MISSILE RANGE**

By: R.D.B.  
RONALD D. BROWN  
COLONEL, US ARMY  
WHITE SANDS MISSILE RANGE

Date: 1 AUG 17

**APPROVAL OF STIPULATED FINAL ORDER**

Pursuant to 20.1.5.600.B(2) NMAC, this Stipulated Final Order, agreed to by the Department and Respondent, is hereby APPROVED as a FINAL ORDER:

  
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**BUTCH TONGATE**  
**SECRETARY**  
**NEW MEXICO ENVIRONMENT DEPARTMENT**

Date: 8/14/17