

**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 14-18 (CO)

STIPULATED FINAL ORDER

The New Mexico Environment Department (“Department”) and the US Department of Energy (“DOE”) and Los Alamos National Security (“LANS”) (collectively the “Respondents”), 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 the Respondents on May 9, 2014. 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. The Respondent DOE is an agency of the United States government. It is the owner and co-operator of Los Alamos National Laboratory (“LANL”).
3. The Respondent LANS is a limited liability company organized under the laws of the State of Delaware. It is a co-operator of LANL pursuant to a contract with DOE that became effective on June 1, 2006.
4. LANL is a national research laboratory located in Los Alamos County, New Mexico. LANL is approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe, occupying approximately 36 square miles on the Pajarito Plateau.
5. LANL is a permitted hazardous waste treatment and storage facility, operating under a permit issued by the Department on November 30, 2010 (“Permit”) with EPA I.D. Number NM0890010515 pursuant to NMSA 1978, Section 74-4-10 of the HWA. The Permit has been modified numerous times since that date. The Permit authorizes the Respondents to treat and store a variety of hazardous wastes.
6. In addition to being a permitted facility, LANL is a large quantity generator and transporter of hazardous waste, a hazardous waste transfer facility, a large quantity handler of universal wastes, a mixed waste generator, and a used oil generator.
7. Beginning on May 13, 2013, inspectors from the Department conducted a compliance evaluation inspection of the Facility. During the inspection, the inspectors observed potential violations of the HWA, the HWMR, and the Permit.
8. At the conclusion of the May 13, 2013 inspection, several information requests and responses were exchanged culminating in an exit conference with the Respondents on November 4, 2013.

9. As a result of the inspection and in consideration of the documentation and information provided, the Department issued a NOV with Proposed Penalties to the Respondents on May 9, 2014.

ALLEGED VIOLATIONS

10. The Department alleged the following violations in the May 9, 2014 NOV:

(a) Violation 1- Failure to properly label containers of hazardous waste, in violation of Permit Condition (“PC”) 3.6(2). This violation is associated with the failure to put a “Free Liquids” label on three (3) containers stored at TA-54 Area G and TA-54 Building 38 that contained free liquids.

(b) Violation 2- Failure to provide secondary containment for containers of hazardous waste with free liquid, in violation of PC 3.7.1(1). This violation is associated with the failure to provide secondary containment for two (2) containers with free liquid stored at TA-54-Building 38.

(c) Violation 3- Failure to properly record the results of an inspection on an Inspection Record Form (“IRF”), in violation of PC 2.6.3, and Permit Attachment E.1. This violation is associated with five (5) IRFs that were found to not have entries indicating the conditions of every item requiring inspection.

(d) Violation 4- Failure to include an accumulation start date on a hazardous waste container label, in violation of PC 3.6(1). This violation is associated with a white 55-gallon drum of mixed waste located in TA-54, Building 38 that had a label without an accumulation start date.

(e) Violation 5- Failure to make a hazardous waste determination for a solid waste, in violation of 20.4.1.300 NMAC, incorporating 40 CFR §262.11. This violation is associated with an “old” oil water separator located in TA-54, Building 412 (the Equipment Room) that is considered a solid waste and that had not undergone a hazardous waste determination.

(f) Violation 6- Failure to properly manage spent fluorescent lamps, *i.e.*, universal waste lamps, in violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.33(d)(1), 273.34(e) and 273.35(c) respectively. This violation is associated with the following:

(i) Two open boxes of spent fluorescent lamps located in TA- 54, Building 1057;

(ii) Two unlabeled boxes of spent lamps located in TA-54, Building 1057; and

(iii) Containers of spent lamps without accumulation start dates, including two boxes located in TA-54 Building 1057 and one five gallon bucket located in TA-3, Building 4200.

(g) Violation 7- Failure to label two (2) containers of used oil with the words “Used Oil” or similar wording, in violation of 40 CFR § 279.22(c)(1) and 20.4.1.1003.A NMAC. This violation is associated with two (2) unlabeled 5-gallon containers of used oil located in TA-54, Building 412 (Equipment Room).

COMPROMISE AND SETTLEMENT

11. All corrective actions required to bring the Respondents back into compliance have been completed and on July 2, 2014 representatives of the Department and the Respondents agreed to the terms of this settlement.

12. The parties enter into the Stipulated Final Order to settle and completely resolve the violations alleged in the NOV and to avoid further litigation and expense.

13. The Respondents admit the jurisdictional allegations of this Stipulated Final Order and consent to the relief specified in this Stipulated Final Order including the civil penalty. The Stipulated Final Order shall not be construed as an admission by the Respondents of the violations alleged in the NOV.

14. In compromise and settlement of the violations alleged in the NOV, the parties agree that the Respondents shall owe a civil penalty of \$38,364. Respondents shall remit the civil penalty to the State of New Mexico within 30 days after the effective date of this Stipulated Final Order. Payment 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

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

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

OTHER TERMS AND CONDITIONS

ENFORCEMENT

17. 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 violation not addressed in the NOV. In any such action, the Respondents reserve the right to assert any defenses that they may have.

18. The Department retains its right to enforce this Order by administrative or judicial action, and Respondents reserve the right to assert any defenses that they may have.

19. In the event that the Department elects to file a judicial action to enforce this Stipulated Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. The Respondents reserve the right to petition for removal of such an action to federal district court. If the Respondents choose not to petition for the removal of such an action to federal district court, the Respondents will not challenge that jurisdiction or venue lies with the First Judicial District Court of Santa Fe County, New Mexico.

COVENANTS NOT TO SUE

20. The Department covenants not to sue or take any administrative or civil action against the Respondent under the HWA, HWMR, and Permit for any of the facts or violations alleged in the NOV. This covenant not to sue extends to DOE and its successor agencies, and to LANS and its respective officers, agents, successors, and assigns and does not extend to any other person. This

Covenant does not extend to future violations of the same permit conditions or CFR requirements.

21. Respondents covenant not to sue the State of New Mexico for any claims deriving from the NOV.

EFFECTIVE DATE

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

INTEGRATION

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


BINDING EFFECT

24. This Stipulated Final Order shall be binding upon the Department and its successor agencies and shall be binding upon DOE and its successor agencies, and on LANS and on its successors as operators of LANL.

AUTHORITY OF SIGNATORIES

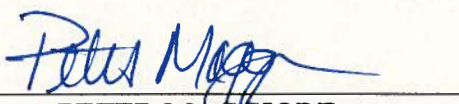
25. The persons executing this Stipulated Final Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Stipulated Final Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to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

For the New Mexico Environment Department

By: 
TOM BLAINE P.E.
DIRECTOR
ENVIRONMENTAL HEALTH DIVISION

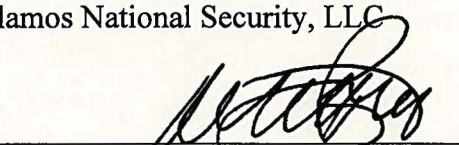
Date: 10/06/14

For the United States Department of Energy

By: 
PETER MAGGIORE
ASSISTANT MANAGER
ENVIRONMENTAL PROJECTS OFFICE
LOS ALAMOS FIELD OFFICE

Date: 9/29/14

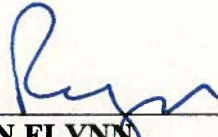
For Los Alamos National Security, LLC

By: 
MICHAEL T. BRANDT, DrPH, CIH
ASSOCIATE DIRECTOR
ENVIRONMENT, SAFETY, & HEALTH

Date: 9/29/14

APPROVAL OF STIPULATED FINAL ORDER

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



**RYAN FLYNN
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT**

Date: 10/7/2014