

Resource Protection Division Routing Slip

To: Katie Roberts, NMED

For: Signature

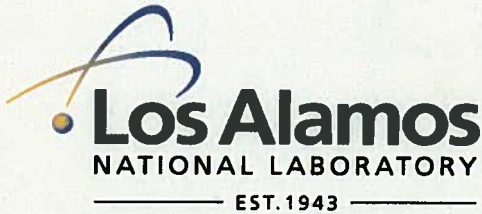
From: Janine Kraemer

Date: January 12, 2017

Subject: Stipulated Final Order for ~~University of New Mexico~~ LANL

Seq.		Initial	Date Rec'd	Date Appr'd
_____	ASD Grant Mgr.	_____	_____	_____
_____	Project Leader	_____	_____	_____
_____	Supervisor	_____	_____	_____
_____	Bureau Finance Mgr.	_____	_____	_____
<u>1</u>	Bureau Chief	<u>JK</u>	_____	<u>1/12/2017</u>
_____	Human Resources	_____	_____	_____
_____	Purchasing Bureau	_____	_____	_____
<u>2</u>	RPD Director	<u>KR</u>	<u>1/13/17</u>	<u>1/13/17</u>
_____	RPD Finance Manager	_____	_____	_____
_____	General Counsel	_____	_____	_____
_____	ITS Director	_____	_____	_____
_____	ASD Director	_____	_____	_____
_____	ASD Budgets	_____	_____	_____
_____	Deputy Secretary	_____	_____	_____
<u>3</u>	NMED Secretary	<u>BT</u>	<u>1/17/17</u>	<u>1/17/17</u>
<u>4</u>	Hearing Clerk	_____	_____	_____

COMMENTS BY DRAFTER OR REVIEWER (S):



ESHID-602120



Office of Laboratory Counsel
Environment Safety & Health Group
P. O. Box 1663, Mail Stop A187
Los Alamos, New Mexico 87545
505-667-3766/Fax 505-665-4424
E-Mail: dwoitte@lanl.gov

Date: January 12, 2017
Symbol: LC-ESH: 2017-DKW-001

HAND DELIVERED

John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505



Re: Stipulated Final Order (Notice of Violation, June 2016)

Dear Mr. Kieling:

This letter transmits a copy of the "Stipulated Final Order" signed by the U.S. Department of Energy National Nuclear Security Administration and Los Alamos National Security, LLC, which resolves the Notice of Violation with Proposed Penalties (June 1, 2016) associated with the 2015 Annual Compliance Inspection.

Please return a file-stamped copy of the "Stipulated Final Order" to me and Lisa Cummings when it has been approved by Cabinet Secretary-Designate Butch Tongate. We appreciate the assistance of you and your staff in reaching resolution of this matter.

Sincerely,

Handwritten signature of Deborah K. Woitte

Deborah K. Woitte
LC-ESH Group Leader

DKW:mah

Enclosure



Mr. John Kieling
LC-ESH:2017-DKW-001

January 12, 2017

Cy: J. Hower, NMED OGC, via jennifer.hower@state.nm.us
F. Rodarte, NMED HWB, via frank.rodarte@state.nm.us
L. Cummings, DOE/NNSA, via lisa.cummings@nnsa.doe.gov
Jody Pugh, DOE/NNSA, via jody.pugh@nnsa.doe.gov
Karen Armijo, DOE/NNSA, via karen.armijo@nnsa.doe.gov
M. Brandt, ADESH, via mtbrandt@lanl.gov
A. Grieggs, EPC-CP, via grieggst@lanl.gov
M. Haagenstad, EPC-CP, via mph@lanl.gov
S. McMichael, ESH-LC, via smcmichael@lanl.gov
LC Records, via lc-mail@lanl.gov
LC-ESH Matter File

**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. HWB17-05 (CO)

STIPULATED FINAL ORDER

The New Mexico Environment Department (“Department”), the United States 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 June 1, 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. 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 most recently issued by the Department on November 30, 2010 (“Permit”), with EPA I.D. Number NM0890010515 pursuant to NMSA 1978, § 74-4-4.2. 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 June 8, 2015 and concluding on June 17, 2015, inspectors from the Department conducted a compliance evaluation inspection of the Facility under the HWA and

HWMR. During the inspection, the inspectors observed potential violations of the HWA, the HWMR, and the Permit.

8. As a result of the inspection, and in consideration of the documentation and information provided, the Department issued an NOV with Proposed Penalties to the Respondents on June 1, 2016. The NOV alleged twelve violations and required Respondents to provide to the Department, within 30 days after receipt of the NOV, a written description of corrective actions taken to address alleged violations.

9. On July 29, 2016, the Respondents submitted to the Department a letter that responded to the NOV allegations and detailed the corrective actions taken by LANL to address the alleged violations.

ALLEGED VIOLATIONS

10. The Department alleged the following violations in the June 1, 2016 NOV:

(a) Failure to keep hazardous waste containers closed at all times during storage at or near the point of generation, except when necessary to add or remove waste, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(c)(1)(i), referring to 40 CFR § 265.173(a). This violation is associated with the failure to close two (2) 1-gallon glass bottles containing Hexane and Ethyl Acetate liquid and one (1) 5-gallon poly container of Acetonitrile liquid stored in Building 85, Room A119.

(b) Failure to mark satellite accumulation containers with the words "Hazardous Waste" or other wording to identify the contents, in violation of 20.4.1.300 NMAC,

incorporating 40 CFR § 262.34(c)(1)(ii). This violation is associated with twenty-four (24) 1-gallon glass bottles containing Hexane and Ethyl Acetate liquid, three (3) 2 ½ gallon poly containers, and one (1) 1-gallon bottle stored in Building 85.

(c) Failure to determine applicable hazardous waste code, in violation of 20.4.1.900 NMAC, incorporating 40 CFR § 268.9. This violation is associated with one (1) waste stream profile at Site ID 5141.

(d) Failure to establish a Satellite Accumulation Area (“SAA”) at or near the point of generation, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(c)(1). This violation is associated with SAA Site ID 4845.

(e) Failure to establish a SAA “at or near the point of generation” or meet 90-day storage area requirements, in violation of 20.4.1.300 NMAC, referencing 40 CFR § 262.34(c)(1). This violation is associated with SAA Site ID 3447 at TA-48, Bldg.1, Room 346 and SAA Site ID 3795 TA-35, Bldg. 85, Room A-119.

(f) Failure to fully characterize hazardous waste, in violation of 20.4.1.500 NMAC, incorporating 40 CFR § 265.13(a)(1). This violation is associated with two (2) 1-gallon glass bottles with Hexane and Ethyl Acetate liquid stored in Building 85.

(g) Failure to comply with manifest requirements, in violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.71(a)(2)(i). This violation is associated with nine (9) manifests.

(h) Failure to list the addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators in the Contingency Plan, in violation of 20.4.1.600

NMAC, incorporating 40 CFR § 265.52(d). This violation is associated with ten (10) contingency plans as identified in the NOV.

(i) Failure to submit a copy of the Contingency Plans to all local police departments, fire departments, and hospitals that may be called during an emergency, in violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.53(b). This violation is associated with ten (10) contingency plans as identified in the NOV.

(j) Failure to promptly complete appropriate corrective measures associated with defects and deteriorations at a Permitted Unit discovered during an inspection, in violation of Permit Condition (“PC”) Attachment E.1.2. This violation is associated with ten (10) “Actions Resulting from Inspections” where corrective actions were not completed.

(k) Failure to ensure that containers holding free liquids have a “free liquid” label, in violation of PC 3.6(2). This violation is associated with one (1) drum located at TA-54.

(l) Failure to maintain secondary containment systems in permitted units used to store waste, which contain free liquids, in violation of PC 3.7.1(1). This violation is associated with two (2) drums located at Areas G232 and G229.

11. Based upon information provided by the Respondent after the issuance of the June 1, 2016 NOV, violations cited in paragraph 10(c) and (h) have been withdrawn by the Department.

COMPROMISE AND SETTLEMENT

12. All corrective actions required to bring the Respondents back into compliance have been completed.

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

14. 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.

15. In compromise and settlement of the violations alleged in the NOV, the parties agree that the Respondents shall owe a civil penalty of \$49,600. 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

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

17. 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

18. Except as provided in Paragraph 21 (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.

19. 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.

20. 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

21. 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 HWMR requirements.

22. Respondents covenant not to sue the State of New Mexico, including the Department, for any claims deriving from the NOV.

EFFECTIVE DATE

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

INTEGRATION

24. 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

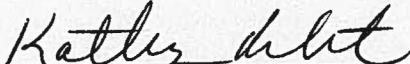
25. This Stipulated Final Order shall be binding upon the Department and its successor agencies and shall be binding upon DOE and its successor agencies, and on LANS and on its successors as operators of LANL.

AUTHORITY OF SIGNATORIES

26. 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

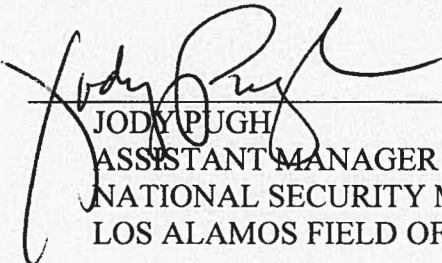
Final Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Stipulated Final Order.

For the New Mexico Environment Department

By: 
KATHRYN ROBERTS
DIRECTOR
RESOURCE PROTECTION DIVISION

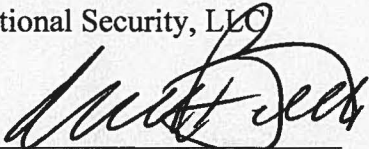
Date: 1/13/17

For the United States Department of Energy

By: 
JODY PUGH
ASSISTANT MANAGER
NATIONAL SECURITY MISSIONS
LOS ALAMOS FIELD OFFICE

Date: 1.10.2017

For Los Alamos National Security, LLC

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

Date: 1/11/17

APPROVAL OF STIPULATED FINAL ORDER

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

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BUTCH TONGATE
SECRETARY-DESIGNATE
NEW MEXICO ENVIRONMENT DEPARTMENT

Date: 1/17/17