

ESHID-603748



Environmental Protection and Compliance Division

Los Alamos National Laboratory
P.O. Box 1663, MS M969
Los Alamos, NM 87545
505-667-8160

National Nuclear Security Administration

Los Alamos Field Office
3747 West Jemez Road, A316
Los Alamos, NM 87544
505-667-5794/Fax 505-606-5948

Symbol: EPC-DO-23-081

Date: February 28, 2023

Mr. Dave Cobrain, Acting Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6313

Subject: Complete Response to Settlement Offer and Stipulated Final Order for July 26, 2022 Notice of Violation, Los Alamos National Laboratory, EPA ID# NM0890010515

Dear Mr. Cobrain:

The U.S. Department of Energy (DOE) Environmental Management Los Alamos Field Office/Newport New Nuclear BWXT-Los Alamos LLC and DOE National Nuclear Security Administration Los Alamos Field Office (NA-LA)/Triad National Security, LLC (Triad) are in receipt of the settlement offer and stipulated final order provided by the New Mexico Environment Department (NMED). An initial response provided by NA-LA/Triad was delivered to your office on February 10, 2023, with a commitment to provide a more complete response back to NMED on or by February 27, 2023.

Please find in Enclosure 1, a copy of the NA-LA/Triad redline revisions to the NMED settlement offer and stipulated final order. If these redline changes are acceptable to the NMED, please begin the process to finalize the stipulated final order. If there are additional questions or comments on these revisions, please contact Patrick Padilla (Triad) at 505-412-0462, plpadilla@lanl.gov or Karen Armijo (NA-LA) at 505-665-7314, karen.armijo@nnsa.doe.gov.

Sincerely,

Sincerely,

JENNIFER
PAYNE (Affiliate)
Digitally signed by JENNIFER
PAYNE (Affiliate)
Date: 2023.02.27 10:57:09
-07'00'

Jennifer E. Payne
Division Leader
Environmental Protection and Compliance Division
Triad National Security, LLC
Los Alamos National Laboratory

KAREN
ARMIJO
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KAREN ARMIJO
Date: 2023.02.27
19:35:36 -07'00'

Karen E. Armijo
Permitting and Compliance Program Manager
National Nuclear Security Administration
Los Alamos Field Office
U.S. Department of Energy

JEP/KEA/PLP

Enclosure(s): Redline Edits of the Settlement Offer and Stipulated Final Order for July 26, 2022 Notice of Violation

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Sincerely,

JENNIFER PAYNE (Affiliate)
Digitally signed by JENNIFER PAYNE (Affiliate)
Date: 2023.02.27 10:57:09 -07'00'

Jennifer E. Payne
Division Leader
Environmental Protection and Compliance Division
Triad National Security, LLC
Los Alamos National Laboratory

Sincerely,

KAREN ARMIJO
Digitally signed by KAREN ARMIJO
Date: 2023.02.27 19:35:36 -07'00'

Karen E. Armijo
Permitting and Compliance Program Manager
National Nuclear Security Administration
Los Alamos Field Office
U.S. Department of Energy



Enclosure 1

Redline Edits of the Settlement Offer and Stipulated Final Order for July 26, 2022 Notice of Violation

EPC-DO-23-081
LA-UR-23-21868

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
)
v.)
)
UNITED STATES DEPARTMENT OF)
ENERGY, <u>TRIAD NATIONAL SECURITY,</u>)
TRIAD NATIONAL SECURITY, LLC, AND)
NEWPORT NEWS NUCLEAR BWXT-)
LOS ALAMOS, LLC)
EPA I.D. NM0890010515,)
Respondents.)
<hr/>)

STIPULATED FINAL ORDER

The New Mexico Environment Department (“Department”) and the United States Department of Energy (“DOE”), Triad National Security, LLC (“Triad”), and Newport News Nuclear BWXT- Los Alamos, LLC (“N3B”), (collectively the “Parties” or “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 July 26, 2022. 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 administrative

civil penalties for violations thereof.

2. The Respondent DOE owns the Los Alamos National Laboratory (“LANL”) located at Bikini Atoll Road, SM-30, Los Alamos, New Mexico (“Facility”).

~~2.3.~~ ~~s, DOE, Respondents Triad, and N3B operate specific hazardous waste management units a government owned facility~~ under a Hazardous Waste Facility Treatment and Storage, and Disposal Facility (“TSDF”) Permit, EPA I.D. Number NM0890010515, located at Bikini Atoll Road, SM-30, Los Alamos, New Mexico (“InstallationPermit”).

~~3.4.~~ Beginning on August 10, 2020, NMED conducted an annual hazardous waste compliance evaluation inspection (“Inspection”) at the InstallationFacility. During the Inspection, the Department observed potential violations of the HWA, the HWMR, and the Permit.

5. As a result of the Inspection and in consideration of the documentation and information provided, the Department issued a Notice of Violation (“NOV”) with proposed penalties to the Respondents on July 26, 2022.

6. On August 25, 2022, the Department the received a response regarding violations associated with the units operated by N3B, covering alleged violations referenced in 8.a) and 8.b) below. On September 13, 2022, N3B submitted an associated payment for such violations in the amount of \$20,000.-on September 13, 2022.

~~4.7.~~ On October 26, 2022, ~~the Respondents submitted to~~ the Department ~~a letter that received a response associated with the units operated by Triad provided response to the Department for those units it operates, responded to the NOV, covering alleged violations referenced in 8.c), 8.d), 8.e) and 8.f) below,~~ provided additional information, and detailed the corrective actions taken ~~by LANL~~ to address the alleged violations.

ALLEGED VIOLATIONS

8. ~~5.~~ The Department alleged the following violations in the NOV dated July 26, 2022:
- a) Failure to ensure that containers holding free liquids have a “free liquids” label, which is a violation of Permit Condition (“PC”) 3.6.(2).
 - b) Failure to provide secondary containment for containers of hazardous waste with free liquids, which is a violation of PC 3.7.1(1).
 - c) Failure to label or mark SAA containers with an indication of the hazards of the waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.15(a)(5)(ii).
 - d) Failure to mark or label a container of hazardous waste with an indication of the hazards of the waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.17(a)(5)(i)(B).
 - e) Failure to mark or label a container of Universal Waste batteries with the words “Universal Waste – Batteries” or with other phrases, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.34(a) and 20.4.1.1001(B) NMAC.
 - f) Failure to fully characterize hazardous waste in accordance with the requirements of 40 CFR 264.13, which is a violation of PC 2.4.1.

COMPROMISE AND SETTLEMENT

9. ~~6.~~ All actions required to maintain or restore Respondent~~s~~' compliance have been completed.
10. ~~7.~~ The Respondents do not admit to any of the allegations in the NOV and furthermore, Respondents do not admit to or agree with the Department's underlying penalty rationale for, the any application of of 40 C.F.R 262.11 new regulatory citations in to the permitted unit identified violation nos. 6a and 6b in the Department's revised Penalty Computation Summary, or issuance of a violation pursuant to 40 C.F.R. 262.11 for this

~~permitted unit.~~ ~~Nevertheless, t~~o avoid further legal proceedings, ~~pursuant to 20.1.5.600(B)(2),~~ the Department and the Respondents agree to the terms and conditions in this Order to resolve the alleged violations in the NOV.

11. ~~8.~~ The Respondents ~~admits~~ to the jurisdictional allegations of this Order and consents to the relief specified in the Order including the civil penalty. Entry into this Order shall not constitute an admission or waiver of federal immunity on the part of any Respondents or any instrumentality of the United States.

~~12.~~ 9. In compromise and settlement of the alleged violations in the NOV, the Parties agree that the Respondents shall pay a civil penalty of \$56,160.00. The Department is in receipt of ~~the~~ Respondent's N3B's partial payment of this civil penalty in the amount of \$20,000.00. ~~The~~ ~~12.13.~~ Respondents Triad shall pay the remaining balance of the civil penalty in the amount of \$36,160.00. 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 delivered to the Department at the following address by either hand delivery or U.S. Postal Service:

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

~~13.14.~~ 10. Payment of the civil penalty is due within 90 days after this Order becomes final and shall be accompanied by a transmittal letter referencing this Order.

~~14.15.~~ ~~11.~~ ~~_____~~ -Anti-Deficiency Act Provision: Nothing herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341, the Non-Appropriated Fund Anti-Deficiency Act, 10 U.S.C. § 2783 or any other law.

OTHER TERMS AND CONDITIONS

ENFORCEMENT

~~15.16.~~ ~~11.~~ Except as provided in Paragraph ~~14.19.~~ (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, the Respondents reserves the right to assert any defenses that it may have.

~~16.17.~~ ~~12.~~ The Department retains its right to enforce this Order by administrative or judicial action, and the Respondents reserves the right to assert any defenses that they may have.

~~17.18.~~ ~~13.~~ In the event that the Department elects to file a judicial action to enforce this Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. The Respondents reserves the right to petition for removal of such an action to federal district court. If the Respondents chooses not to petition for removal of such an action to federal district court, the Respondents will not challenge that jurisdiction or that the venue lies with the First Judicial Court of Santa Fe County, New Mexico.

COVENANTS NOT TO SUE

~~18.19.~~ ~~14.~~ The Department covenants not to sue or take any administrative or civil action against the Respondents under the HWA ~~and~~, HWMR, ~~and Agreement~~ for any of the facts or

violations alleged in the NOV or this Order. This covenant not to sue extends to the Respondents and their 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 or HWMR requirements or violations of this Order.

~~19.20. 15.~~ Respondents covenants not to sue the Department State of New Mexico for ~~any claims deriving from the NOV.~~any of the facts or violations alleged in the NOV or this Order.

EFFECTIVE DATE

~~20.21. 16.~~ This Order shall become effective on the date it is approved and signed by the Department Secretary.

INTEGRATION

~~21.22. 17.~~ This Order merges all prior written and oral communications between the Department and the Respondents concerning the subject matter of the Order and contains the entire agreement between the Department and the Respondents.

BINDING EFFECT

~~22.23. 18.~~ This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondents and on their successors.

AUTHORITY OF SIGNATORIES

~~23.24. 19.~~ The persons executing this Order represent that they have the requisite authority to bind either the Department or the Respondents, as appropriate, to this Order, and that their representation shall be legally sufficient evidence of actual or apparent authority to bind the Department or the Respondents to this Order.

For: **NEW MEXICO ENVIRONMENT DEPARTMENT**

By: _____ Date: _____
JAMES C. KENNEY
SECRETARY
NEW MEXICO ENVIRONMENT DEPARTMENT

For: **~~-UNITED STATES DEPARTMENT OF ENERGY,
-NATIONAL NUCLEAR SECURITY ADMINISTRATION, ENVIRONMENTAL
MANAGEMENT-LOS ALAMOS FIELD OFFICE~~**

By: _____ Date: _____
THEODORE WYKA
FIELD OFFICE MANAGER
~~EM-LANA-LA~~

For: **~~-UNITED STATES DEPARTMENT OF ENERGY,
NNSA-ENVIRONMENTAL MANAGEMENT,
LOS ALAMOS FIELD OFFICE~~**

By: _____ Date: _____
MICHAEL MIKOLANIS
FIELD OFFICE MANAGER
~~NA-LAEM-LA~~

For: **~~-TRIAD NATIONAL SECURITY, LLC~~**

By: _____ Date: _____
~~THOMAS MASON STEVEN COLEMAN
LABORATORY DIRECTOR ASSOCIATE LABORATORY DIRECTOR
ENVIRONMENT, SAFETY, HEALTH AND QUALITY
TRIAD~~

For: **~~-NEWPORT NEWS NUCLEAR BWXT – LOS ALAMOS, LLC~~**

By: _____

Date: _____

KIMBERLY LEBAK
PRESIDENT
N3B

APPROVAL OF STIPULATED FINAL ORDER

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

-[INSERT SIGNATURE BLOCK FOR SECRETARY KENNEY]