



ESHID-603824

MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

CERTIFIED MAIL, RETURN RECEIPT REQUIRED

February 13, 2024

Theodore Wyka
Field Office Manager
DOE/National Nuclear Security Administration-
Los Alamos Field Office (NA-LA)
3747 W. Jemez Road, MS A316
Los Alamos, NM 87544

Michael Mikolanis
Field Office Manager
DOE/Office of Environmental Management-
Los Alamos Field Office (EM-LA)
P.O. Box 1663, MS M984
Los Alamos, NM 87545

**RE: NOTICE OF VIOLATION WITH PROPOSED PENALTIES
LOS ALAMOS NATIONAL LABORATORY
EPA ID# NM0890010515**

Dear Messrs. Wyka and Mikolanis:

Beginning on November 14, 2022, the New Mexico Environment Department ("NMED") conducted a hazardous waste Compliance Evaluation Inspection ("Inspection") at Los Alamos National Laboratory ("LANL") located at Bikini Atoll Road, SM-30, Los Alamos, New Mexico ("Installation"). Based on observations and review of the information obtained, NMED has determined that LANL is the following:

- a large quantity generator of hazardous waste,
- a transporter of hazardous waste;
- a hazardous waste transfer facility;
- a large quantity handler of universal wastes;
- a mixed waste generator; and
- a permitted hazardous waste treatment and storage facility.

Furthermore, NMED has determined that LANL has violated the New Mexico Hazardous Waste Management Regulations ("HWMR") 20.4.1 New Mexico Administrative Code ("NMAC") and/or LANL's RCRA Hazardous Waste Facility Permit ("Permit") as specified below.

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE

Hazardous Waste Bureau - 2905 Rodeo Park Drive East , Building 1 Santa Fe, New Mexico 87505-6313
Telephone (505) 476-6000 - www.env.nm.gov

NMED inspectors observed the following violations:

- 1. Failure to ensure that containers of hazardous waste that are stored outdoors and are not being actively managed are protected from precipitation using weather protective equipment (e.g., containment shell, secured tarp) or are protected by the design of the equipment. Specifically, NMED inspectors observed a large hole in the roofing at TA-54, Area G, Dome 48 near several 55-gallon containers of mixed waste. These containers were insufficiently tarped such that the container lid was not completely protected from rainwater contact. This is a violation of Permit Condition 3.5.1(5).**

Civil Penalty

As a result of Violation 1, NMED is assessing a civil penalty of \$20,000.00

Corrective Action

LANL must provide NMED with documentation, such as photographs, demonstrating that LANL has properly and completely protected hazardous waste containers at TA-54, Area G, Dome 48 from potential contact with precipitation i.e. improved tarping and/or repairs to the storage area.

- 2. Failure to ensure that all containers used to store hazardous waste are in good condition (e.g. no severe rusting or apparent structural defects). Specifically, at TA-54, Area G, Dome 232 NMED inspectors observed one 55-gallon drum of mixed waste with severe rusting and that was in poor condition. Also at TA-54 Area L, Site ID 54-0032 NMED inspectors observed one 55-gallon drum of mixed waste that was also severely rusted and in poor condition. This is a violation of Permit Condition 3.2.**

Civil Penalty

As a result of this violation, NMED is assessing a civil penalty of \$49,500.00

Corrective Action

On September 20, 2023, LANL provided disposal documentation showing that the container observed at TA-54 Area L, Site ID 54-0032 has been appropriately disposed. LANL must provide NMED with documentation, such as policy documents, disposal documents and photographs, demonstrating that the container observed at TA-54 Area G, Dome 232 referenced in Violation 2 has been appropriately overpacked and/or disposed off-site, and that LANL will ensure that hazardous waste containers visibly impacted by severe rusting (causing structural damage to the container body and/or lid deeper than the outer paint coating) are appropriately overpacked.

- 3. Failure to perform necessary repairs to prevent run-on or run-off of stormwater at areas where hazardous wastes are stored. Specifically, NMED inspectors observed run-on stormwater that had infiltrated through the perimeter curb of the Dome 153 at TA-54, Area G during a recent precipitation event and made contact with pallets underneath Standard Waste Boxes ("SWB") of mixed waste. This is a violation of Permit Condition 3.12.2.1.**

Civil Penalty

As a result of this violation, NMED is assessing a civil penalty of \$ 350,750.00.

Corrective Action

LANL must provide NMED with documentation, such as construction records and photographs, demonstrating that locations where hazardous wastes are stored are sufficiently protected from run-on.

- 4. Failure to provide secondary containment for containers of hazardous waste with free liquids. Specifically, NMED inspectors observed two 55-gallon drums of mixed waste located in TA-54 Area G, Dome 232 labeled as containing free liquids, that were not placed on secondary containment. This is a violation of Permit Condition 3.7.1(1).**

Civil Penalty

As a result of this violation, NMED is assessing a civil penalty of \$220,500.00

Corrective Action

On September 20, 2023, LANL provided waste management documentation demonstrating that this violation has been corrected.

- 5. Failure to label satellite containers of hazardous waste with an indication of the relevant hazard(s). Specifically, at TA-35, Bldg. 455, Room 104, NMED observed inspectors observed a small container of hazardous Lithium Hydride waste that was not marked with the relevant hazard indicators. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.15(a)(5)(ii).**

Civil Penalty

As a result of this violation, NMED is assessing a civil penalty of \$630.00

Corrective Action

LANL corrected this violation at the time of inspection.

- 6. Failure to prepare and complete hazardous waste manifests to accompany off-site shipments of hazardous waste. Specifically, during review of hazardous waste manifests showed that the information for the hazardous waste transporter in Blocks 6 and 7 of manifest #014573908FLE was not completed. This is a violation of 20.4.1.300 NMAC, incorporating 40 CFR 262.20(a)(1).**

Civil Penalty

As a result of this violation, NMED is assessing a civil penalty of \$1,495.00

Corrective Action

On November 30, 2023 LANL provided NMED with a corrected copy of manifest #014573908FLE, demonstrating that this violation has been corrected.

Regarding the Corrective Actions described above, LANL shall provide to NMED within thirty (30) days of receipt of this letter a written description of the actions taken by LANL to address violations 1 through 3 described above or a schedule for implementation of corrective actions not yet completed.

In accordance with NMSA 1978, Section 74-4-10, NMED may: (1) issue a Compliance Order requiring compliance immediately or within a specified time period or assess a civil penalty for any past or current violations of up to \$10,000 per day of non-compliance for each violation, or both; or (2) commence a civil action in District Court for appropriate relief, including a temporary or permanent injunction. Any such order may include a suspension or revocation of any permit issued by NMED. Pursuant to the New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, §§ 74-4-1 to 14, NMED is assessing a total civil penalty of \$642,875.00 to settle the violations of the HWA and the Hazardous Waste Management Regulations set forth in the NOV.

History of Violations

On May 13, 2013, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed seven (7) violations including failure to label containers of hazardous waste and used oil, failure to provide secondary containment for containers of hazardous waste with free liquid, failure to properly record the results of an inspection, failure to make a hazardous waste determination, and failure to properly manage spent fluorescent lamps. LANL paid a civil penalty of \$38,364.00 as a result of that inspection.

On April 2, 2014, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed five (5) violations including failure to label containers of hazardous waste, failure to provide secondary containment for containers of hazardous waste with free liquid, failure to properly record the results of an inspection, failure to properly complete a hazardous waste manifest, and failure to perform a hazardous waste determination. LANL paid a civil penalty of \$48,120.00 as a result of that inspection.

On May 2, 2014, NMED performed a Non-Financial Records Review (“NRR”), as a result of the reaction of a hazardous waste container disposed at the Waste Isolation Pilot Plant (“WIPP”) Facility that was generated and treated at LANL. During that review, NMED observed 18 violations including failure to obtain a permit for the treatment of hazardous waste, treatment of hazardous waste in a storage unit that was not authorized by the Permit for treatment, failure to confine waste treatment to only those units which LANL had proposed as treatment units in their Permit Application, failure to submit a permit modification to treat waste, failure to notify NMED in writing within thirty (30) days of discovery of the deviation from the information contained in the Permit Application which caused LANL to be out of compliance with the Permit, failure to notify NMED that LANL did not submit relevant facts in their Permit Application, failure to provide NMED advanced written notice that LANL was going to treat hazardous waste, failure to provide NMED an opportunity to inspect a modified unit to ensure LANL complied with their permit, acceptance of waste streams for storage and treatment at permitted units at the Facility that were not fully characterized, failure to ensure that initial characterization of four (4) waste streams were reviewed or repeated to verify that the characterization of was accurate and updated, failure to annually reevaluate waste streams to verify the accuracy of initial and subsequent characterization results, failure to annually reevaluate waste streams to assess the accuracy of the initial waste characterization regarding hazardous waste number assignments, failure to perform reevaluation of initial characterization information and annual verification of 4 waste streams, mixture of incompatible wastes and materials in the same container, failure to exercise reasonable and necessary precautions during unauthorized treatment and storage of ignitable or reactive waste, mixing of incompatible waste, or mixing of incompatible wastes and other materials to prevent reactions which could generate or result in extreme heat, fire, explosions, or dangerous chemical reactions which LANL knew or should have known could harm human health and the environment, failure to provide an oral report within 24 hours after the time LANL knew or should have known of the noncompliance which endangered human health or the environment, and failure to provide a written report within five (5) days after the time LANL knew or should have known of the noncompliance that endangered human health or the environment. LANL and NMED agreed to the performance of a series of Supplemental Environmental Projects, with a projected total cost of \$32,000,000.00, as a result of that review.

On June 8, 2015, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed ten (10) violations including failure to keep hazardous waste containers closed, failure to label hazardous waste containers, failure to determine applicable hazardous waste numbers, failure to establish a Satellite Accumulation Area (“SAA”) at or near the point of generation, failure to establish an SAA at or near the point of generation of meet 90-day storage requirements, failure to perform a hazardous waste determination, failure to comply with hazardous waste manifest

requirements, failure to list the addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinators in the Contingency Plan, failure to submit a copy of the Contingency Plan to all local police departments, fire departments, and hospitals that may be called during an emergency, failure to properly complete appropriate corrective measures associated with defects and deteriorations at a Permitted Unit discovered during an inspection, failure to ensure that containers holding free liquids have a "free liquid" label, and failure to maintain secondary containment systems in permitted units used to store waste, which contain free liquids. LANL paid a civil penalty of \$49,600.00 as a result of that inspection.

On June 13, 2016, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed three (3) violations including failure to label containers of hazardous waste, failure to ensure that containers holding free liquids have a "free liquid" label, and failure to properly complete appropriate corrective measures associated with defects and deteriorations at a Permitted Unit discovered during an inspection. LANL was subject to an informal enforcement action as a result of that inspection.

On April 17, 2017, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed eight (8) violations including failure to make a hazardous waste determination, failure to keep containers of hazardous waste closed, failure to properly label hazardous waste containers, failure to conduct annual hazardous waste refresher training, failure to maintain appropriate training documentation, failure to maintain the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water which could threaten human health or the environment, failure to submit an incident report within fifteen (15) days of a hazardous waste incident, and failure to demonstrate the length of time universal waste has accumulated. LANL paid a civil penalty of \$34,441.00 as a result of that inspection.

On November 17, 2017, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed five (5) violations including failure to properly characterize a hazardous waste, failure to segregate incompatible hazardous wastes, failure to properly label hazardous waste containers, and failure to respond to releases of used oil. LANL was subject to an informal enforcement action as a result of that inspection.

On February 1, 2018, NMED performed an NRR. During that review, NMED observed two (2) violations including failure to request an extension to store hazardous waste containers beyond the 90-day storage limit in central accumulation storage areas ("CAA") and storage of hazardous waste containers beyond the 1-year storage time limit in a permitted unit. LANL paid a civil penalty of \$31,248.00 as a result of that review.

On October 3, 2018, NMED performed an NRR. During that review, NMED observed three (3) violations including failure to notify NMED within three (3) days of a hazardous waste characterization discrepancy, failure to determine that a solid waste is a hazardous waste, and failure to properly complete a hazardous waste manifest. LANL paid a civil penalty of \$54,750.00 as a result of that review.

On November 8, 2018, NMED performed an NRR. During that review, NMED observed a violation of storage of hazardous waste beyond one year from the date the waste was first placed into storage in a permitted unit. LANL paid a civil penalty of \$61,750.00 as a result of that review.

On April 29, 2019, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed sixteen (16) violations including storage of hazardous waste beyond one year from the date the waste was first placed into storage in a permitted unit, failure to remedy within 24-hours any deterioration or malfunction of equipment or structures discovered during an inspection, which may lead to an environmental or human health hazard, failure to determine applicable hazardous waste numbers, failure to ensure that containers of hazardous waste that are stored outdoors and not actively managed are protected from contact with precipitation using weather protective equipment (e.g., containment shell, secured tarp) or are protected by the design of the equipment, failure to perform a hazardous waste determination, failure to properly label hazardous waste and used oil containers, failure to maintain an SAA at or near the point of generation, failure to separate or protect by any practical means incompatible hazardous waste containers, and failure to take precautions to prevent the accidental reaction of reactive wastes. LANL paid a civil penalty of \$153,938.00 as a result of that inspection.

On June 5, 2020, NMED performed a NRR. During that review, NMED observed a violation of failing to submit Federal Facility Compliance Order ("FFCO") Site Treatment Plan ("STP") waste shipment information to NMED within 45 days. LANL paid a civil penalty of \$227,700.00 as a result of that review.

On August 10, 2020, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed six (6) violations including failure to make a hazardous waste determination, failure to ensure that containers holding free liquids have a "free liquids" label, failure to provide secondary containment for containers of hazardous waste with free liquids, and failure to properly label containers of hazardous waste and universal waste. LANL paid a civil penalty of \$56,160.00 as a result of that inspection.

On October 25, 2021, NMED performed a routine hazardous waste inspection. During that inspection, NMED observed two (2) violations, including failure to label hazardous waste containers and failure to keep hazardous waste containers closed. LANL was subject to an informal enforcement action as a result of that inspection.

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On January 27, 2022, NMED performed a NRR. During that review, NMED observed a violation of failing to dispose of hazardous waste within ninety (90) days /failure to obtain a permit. LANL paid a civil penalty of \$214,500.00 as a result of that review.

Please note that your facility will appear on the Department's Enforcement Watch as a result of this NOV (see: <https://www.env.nm.gov/enforcement-watch/>). Further, the Department will issue a press release to local media highlighting your facility as appearing on this webpage. Your facility will remain on the Enforcement Watch website as an active matter until this matter is fully resolved, including the payment of the assessed civil penalty.

Pursuant to the NMED Delegation Order dated March 24, 2023, the Cabinet Secretary has delegated the authority to issue Notices of Violation with Proposed Penalties under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau. If you have any questions regarding this letter or would like to discuss the civil penalties, please contact Compliance and Technical Assistance Program Manager Aaron Coffman at 505-690-5211 or aaron.coffman@env.nm.gov within 30 days of the date of this notice to schedule an informal conference concerning resolution of this matter. If no response is received from you within 30 days of the date of this notice, then a Stipulated Final Order will be mailed for your signature.

Sincerely,

DocuSigned by:

Rick Shean

4008430C2BC2409...

Rick Shean

Director

Resource Protection Division

RS: ac

cc: Aaron Coffman, NMED HWB
Ricardo Maestas, NMED HWB Acting Chief
Neelam Dhawan, NMED HWB
Thomas X. Vigil, NMED District II Manager
Siona Briley, NMED HWB
Lisa Chai, NMED OGC
Ellie Gilbertson, Deputy Field Office Manager, DOE EM-LA

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