*State of New Mexico*
*ENVIRONMENT DEPARTMENT*

***Hazardous Waste Bureau***

2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6313
Phone (505) 476-6000 Fax (505) 476-6030
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**SUSANA MARTINEZ**
**Governor**
**JOHN A. SANCHEZ**
**Lieutenant Governor**

**BUTCH TONGATE**
**Cabinet Secretary**
**J. C. BORREGO**
**Deputy Secretary**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

December 19, 2017

Pete Maggiore,
Acting Chief of Staff Manager
Los Alamos Site Office
Department of Energy
3747 W. Jemez Rd., MS-A316
Los Alamos, NM 87544

Michael T. Brandt
Associate Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
P.O. Box 1663, MS K491
Los Alamos, NM 87545

**RE: STIPULATED FINAL ORDER-RETURN TO COMPLIANCE**
**LOS ALAMOS NATIONAL LABORATORIES**
**EPA ID# NM0890010515**

Dear Messrs. Maggiore & Brandt:

Enclosed is a copy of the signed Stipulated Final Order ("Order") to resolve claims of the New Mexico Environment Department ("NMED") for civil penalties and other relief for violations specified in the Department's Notice of Violation dated July 20, 2017.

Thank you for your cooperation on this matter. If you have any questions regarding this letter or the Stipulated Final Order, please contact Don Meyer of my staff at (505) 476-6021 or by email at don.meyer@state.nm.us.

Sincerely,

Janine Kraemer, CHMM
Program Manager
Compliance & Technical Assistance Program

cc: Janine Kramer, NMED HWB
Don Meyer, NMED HWB
Robert Italiano, District II Manager

file: Library #2390

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STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT

| | | |
|---|---|---|
| NEW MEXICO ENVIRONMENT DEPARTMENT, Complainant, | ) | |
| v. | ) | NO. HWB-17-24 |
| UNITED STATES DEPARTMENT OF ENERGY and LOS ALAMOS NATIONAL SECURITY, LLC, Respondents. | ) | |

# STIPULATED FINAL ORDER

The New Mexico Environment Department ("Department"), and the United States Department of Energy ("DOE") and Los Alamos National Security ("LANS") (collectively "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 20, 2017. 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.

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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 June 2006.

4. LANL is a permitted hazardous waste treatment and storage facility, operating under a permit modified numerous time and most recently issued by the Department on November 30, 2010 ("Permit"), with EPA ID Number NM0890010515 pursuant to NMSA 1978, §74-4-4.2. The Permit authorizes the Respondents to treat and store hazardous wastes.

5. In addition to being a permitted Facility, LANL is a large quantity generator and transporter of hazardous waste, a large quantity handler of universal wastes, a mixed waste generator, and a used oil generator.

6. Beginning on April 17, 2017 and concluding on April, 20, 2017, 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.

7. 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 July 20, 2017. On August 18, 2017, the Respondents submitted to the Department a letter that responded to the NOV allegations and detailed the corrective action taken by LANL to address the alleged violations.

## ALLEGED VIOLATIONS

8. The Department alleged the following violations in the July 20, 2017 NOV:

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a) Failure to make a hazardous waste determination, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11. This violation is associated with one (1) 30-gallon metal drum storying waste gasoline located at the 501 Area (outside of Area G).

b) Failure to keep a hazardous waste container closed, which is a violation of 20.4. 1.300 NMAC, incorporating 40 CFR § 262.34(c)(1)(i). This violation is associated with one (1) 4-L bottle containing hydrofluoric acid located at TA-35, Bldg. 213, Rm. 107A, SI# 6358.

c) Failure to mark containers of hazardous waste at a Satellite Accumulation Area ("SAA") with the words Hazardous Waste, which is a violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.34(c)(l)(ii). This violation occurred at (a) TA-3, Bldg. 1819, SI# 1372 and (b) TA-35, Bldg. 85E, Rm. 108, SI# 6147.

d) Failure to conduct hazardous waste training for eight employees, which is a violation of 20.4. 1.600 NMAC, incorporating 40 CFR § 265.16(a)(l). Upon receipt and review of additional information this violation was revised to failure to conduct annual hazardous waste training, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.16(c).

e) Failure to maintain personnel training records at TA-72, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.16(d).

f) Failure to maintain a 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, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.31. This violation is associated with a container that caused an incident at TA-55.

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g) Failure to submit an incident report within 15 days of the incident, which is a violation of 20.4.1.600 NMAC, incorporating 40 CFR § 265.56(i). This violation is associated with an incident at TA-55.

h) Failure to label and demonstrate the length of time that the universal waste was accumulated, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.34(e) and 40 CFR § 273.35(c). This violation is associated with a box located at TA-16, Bldg. 926, SI# 5284.

**COMPROMISE AND SETTLEMENT**

9. All corrective actions required to maintain or restore Respondents' compliance have been completed.

10. 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.

11. The Respondents do not admit to any of the allegations in the NOV, other than what was filed in the NOV response. To avoid further legal proceedings, the Department and the Respondents agree to the terms and conditions in this Order to resolve the alleged violations in the NOV.

12. The Respondents admit to 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.

13. In compromise and settlement of the alleged violations in the NOV, the parties agree that the Respondents shall owe a civil penalty of $34,441.00. Payments shall be made by certified check or other guaranteed negotiable instrument, payable to the "*State of New*



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*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

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

15. If Respondents fail to make timely and complete payment, the Respondents 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

16. Except as provided in Paragraph 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 reserve the right to assert any defenses that they may have.

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

18. 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. The Respondents reserve the right to petition for the removal of

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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.

**COVENANT NOT TO SUE**

19. The Department covenants not to sue or take any administrative or civil action against the Respondents 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, 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 permit conditions or HWMR requirements.

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

**EFFECTIVE DATE**

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

**INTEGRATION**

22. 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**

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



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## AUTHORITY OF SIGNATORIES

24. 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.

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For the NEW MEXICO ENVIRONMENT DEPARTMENT.

By: JCB Date: 11/17/17

J.C. BORREGO
ACTING DIVISION DIRECTOR
RESOURCE PROTECTION DIVISION

For: UNITED STATES DEPARTMENT OF ENERGY

By: Date: 03 Nov 2017

KAREN ARMIJO
ENVIRONMENTAL PERMITTING MANAGER
LOS ALAMOS FIELD OFFICE

For: LOS ALAMOS NATIONAL SECURITY, LLC

By: for MTB Date: 11/01/17

MICHAEL T. BRANDT, PHD, CIH
ASSOCIATE DIRECTOR
ENVIRONMENT, SAFETY & HEALTH

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**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.

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

Date: 11/20/17

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