



Environmental Protection and Compliance Division
 P.O. Box 1663, MS M969
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**National Nuclear Security Administration
 Los Alamos Field Office**
 3747 West Jemez Road, MS A316
 Los Alamos, New Mexico 87544
 (505) 667-5105, Fax (505) 667-5948

Date: October 26, 2022
 Symbol: EPC-DO-22-296
 LA-UR-22-30934

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

Subject: **Response to Notice of Violation with Proposed Penalties for Fiscal Year 2020, Los Alamos National Laboratory, EPA ID# NM0890010515**

Dear Mr. Shean:

On July 26, 2022, the New Mexico Environment Department (NMED) issued a Notice of Violation (NOV) to the Los Alamos National Laboratory (LANL) resulting from the 2020 Compliance and Evaluation Inspection, conducted on August 10, 2020 (2020 Annual Inspection). The NOV identifies six potential violations of the New Mexico Hazardous Waste Management Regulations (20.4.1 NMAC) and the LANL Hazardous Waste Facility Permit EPA ID #NM0890010515 (Permit). This letter and associated attachments provide responses to the NOV allegations on behalf of the U.S. Department of Energy National Nuclear Security Administration Los Alamos Field Office (NA-LA) and Triad National Security, LLC (Triad). NA-LA and Triad are committed to excellence in environmental protection and compliance and respectfully request your consideration of the responses and additional information provided below. We would also welcome the opportunity to meet informally regarding this response.

Each proposed violation is repeated verbatim in italics below, followed by the NA-LA and Triad response.¹ Where appropriate, the responses provide the written description of corrective actions listed in the NOV.

3. *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).*

¹ On August 25, 2022, Newport News Nuclear BWXT-Los Alamos (N3B) and DOE Environmental Management Los Alamos Field Office (DOE-EM) separately responded to NOV violations 1 and 2 (N3B-2022-0333). This letter responds to remaining NOV violations 3-6 on behalf of NA-LA and Triad.

Specifically, NMED Inspectors observed the following:

- 1) *At TA-35, Site ID#1210, NMED observed a 5-gallon plastic container storing silver-contaminated waste Lab solids that was not marked with an indicator of toxicity.*
- 2) *At TA-59, Site Id # 6481 NMED observed a container without a hazard indicated on the container.*

Corrective Action: *LANL must provide to NMED documentation/photos that the above containers have been labeled.*

NA-LA and Triad admit that these containers were not marked with indications of the hazards of the waste per the requirements at 20.1.1.300 NMAC, incorporating 40 CFR 262.15(A)(5)(ii).

Regarding Technical Area (TA) 35, Site ID #1210, corrective action was conducted on August 10, 2020 (the date of inspection), in the presence of the NMED Inspector, by labeling the 5-gallon plastic container with a toxicity indicator. Attachment 1 includes a photograph of the 5-gallon plastic container at TA-35 that was labeled with the toxicity indicator on August 10, 2020.

Regarding TA-59, Site ID #6481, corrective action was conducted on August 10, 2020 (the date of inspection), in the presence of the NMED Inspector, by labelling the container with the corrosivity indicator.² See Attachment 2, Affidavit affirming that the container was properly labelled on August 10, 2020.

4. *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). Specifically, NMED Inspectors observed one blue 30-gallon poly container located in a Central Accumulation Area (“CAA”) that was observed without a hazard indicated on the container. The container was located at TA-53 Site Id # 5790.*

Corrective Action: *None – corrected at the time of the inspection.*

NA-LA and Triad admit that the one blue 30-gallon poly container referenced did not have an indication of the hazards of the waste and concur that this was corrected on August 10, 2020, at the time of inspection.

5. *Failure to mark or label a container of Universal Waste batteries with the words “Universal Waste – Batteries” or other phrases, which is a violation of 20.4.1.1000 NMAC incorporating 40 CFR 273.34(a). Specifically, NMED Inspectors observed one 1- gallon container storing waste batteries that was observed to be without a label. The container was located at TA-55 Site Id # 6636.*

Corrective Action: *LANL must provide to NMED documentation/photos that the above container has been labeled.*

² Although not specified above in violation 3(2), NA-LA and Triad records from the 2020 Annual Inspection demonstrate that the missing indicator label was a corrosivity indicator.

Upon investigation, NA-LA and Triad learned that the container in question was provided by a company that is contracted for recycling batteries. These containers are all pre-labeled with the words “universal waste” on the top of the container, which is a permissible “other phrase.” Therefore, the referenced container was properly marked at the time of the inspection, contrary to the allegation.

As requested, please find that attached corrective action documentation (see Attachments 3 and 4). Attachment 3 includes a picture of the label present at the top of the container when it was shipped to LANL. Attachment 4 includes a supporting affidavit that includes information demonstrating that the referenced container had the correct labelling at the time of inspection on August 10, 2020. For these reasons, NA-LA and Triad denies the proposed violation and respectfully requests that NMED withdraw this violation and all associated penalties.

6. *Failure to fully characterize hazardous waste in accordance with the requirements of 40 CFR 264.1, which is a violation of PC 2.4.1. Specifically, on March 12, 2021, NMED was notified that six containers were mis-characterized and potentially contained reactive hazardous wastes that are prohibited from disposal at WIPP. The mischaracterization was discovered on February 26, 2021, during an incident with HEPA filters contaminated with air reactive titanium particles. The containers were LA00000073611, LA00000072668, LA00000074392 and LA00000074720. Two additional containers which had already been delivered to WIPP: LA00000073445 and LA00000073609.*

Corrective Action: *LANL must provide to NMED documentation/photos that the above containers have been adequately characterized.*

NA-LA and Triad respectfully deny the allegation as presented and understand the allegation to contain potential typographical errors, unless otherwise informed by the NMED. It appears that the appropriate hazardous waste regulation citation may be to 40 CFR 264.13 rather than 40 CFR 264.1. It also appears that reference to container LA00000072668 may be intended to reference container LA00000073668. The allegation as written also appears to misstate the March 12, 2021, notification. This notification, which was provided in support of proactive and open communication, alerted NMED of a “potential noncompliance,” rather than providing notification as to mischaracterization of containers as stated in the allegation. See March 12, 2021, Five-Day Written Report for Oral Notification on March 9, 2021, Los Alamos National Laboratory, EPA ID # NM 0890010515 (“Five-Day Report”), at pg. 1. The Five-Day Report stated that a “fact-finding and preliminary investigation” was ongoing and that additional information regarding the incident, including whether a non-compliance did in fact occur, would be provided to NMED as more information became available. See Five-Day Report, at pg. 2.

Furthermore, NA-LA and Triad respectfully disagree with NMED that the events described in this NOV violation 6 fall under the scope of the 2020 Annual Inspection. This issue was self-reported to NMED. Neither this incident nor its subsequent recharacterization was discovered by NMED inspectors during the 2020 Annual Inspection. After providing the Five-Day Report to NMED, through careful analysis it was determined that none of the six containers contained reactive hazardous waste that are prohibited from disposal at the Waste Isolation Pilot Plant (WIPP). On April 1, 2021, NA-LA and Triad followed up with NMED regarding the event, providing NMED with engineering studies thoroughly analyzing the background facts; identifying the re-characterization process underway; and the restart of operations that had been immediately paused due to the event. On May 19, 2021, NA-LA and Triad again followed-up with NMED providing a thorough review of the process and re-characterization of the waste

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stream. These processes and analyses, which occurred subsequent to the Five-Day Report, were all necessary before a determination could be made as to whether the containers contained reactive hazardous wastes. Ultimately, it was determined that none of the six containers contained reactive hazardous wastes that are prohibited from disposal at WIPP.

At the time of the Five-Day Report, four of the six containers (LA00000073611, LA00000073668, LA00000074392, and LA00000074720) were still located at LANL, were still being staged, and had not been marked for shipping to the Waste Isolation Pilot Plant (WIPP). NA-LA and Triad acknowledge that two of the six containers (LA00000073445 and LA00000073609) had previously been shipped to WIPP for waste disposal.

Regarding the two containers shipped to WIPP prior to the Five-Day Report (LA00000073445 and LA00000073609), although subsequent analysis demonstrated that these containers did not contain Resource Conservation and Recovery Act reactive waste at the time of their shipment, NA-LA and Triad admit that they were shipped prior to the determination that containers contained no reactive hazardous waste that are prohibited from disposal at WIPP. As such, NA-LA and Triad agree that NMED may issue an NOV related to these two containers and assess a corresponding penalty of \$20,000.00.

However, for the four containers that were still located at LANL at the time of the event, still being staged, and had not been shipped to WIPP for disposition (LA00000073611, LA00000073668, LA00000074392, and LA00000074720), NA-LA and Triad respectfully disagree with the allegations in NOV violation 6. As stated above, after providing the Five-Day Report to NMED, through careful analysis it was determined that none of the six containers contained reactive hazardous waste that are prohibited from disposal at WIPP. Additionally, the containers were stored and managed in compliance with all permit conditions applicable under the Permit. Prior to any drums being shipped off site for disposal at WIPP, NA-LA and Triad had both an opportunity and an affirmative obligation to conduct this evaluation. See Permit Section 2.4.7. These four containers, as determined in the above-referenced careful analysis, contained no reactive hazardous waste that are prohibited from disposal at WIPP. Accordingly, NA-LA and Triad deny the proposed violation related to these four containers and request that NMED withdraw the portion of the NOV and corresponding \$40,000.00 penalty.

NA-LA and Triad appreciate the opportunity to respond to and engage with NMED on the NOV for the 2020 Annual Inspection.

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 if you have any questions.

Sincerely,

JENNIFER
PAYNE (Affiliate)

Digitally signed by JENNIFER
PAYNE (Affiliate)
Date: 2022.10.19 09:56:09
-06'00'

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: 2022.10.21
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Karen E. Armijo
Permitting and Compliance Program Manager
National Nuclear Security Administration
Los Alamos Field Office
U.S. Department of Energy

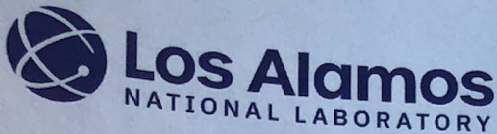
Mr. Rick Shean
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JEP/KEA/PLP

- Attachment: 1) Photograph of container within Satellite Accumulation Area at TA-35
2) Affidavit concerning marking containers with indications of hazards at TA-59
3) Photograph of top of universal waste container at TA-55
4) Affidavit concerning universal waste container at TA-55

Copy:

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locatesteam@lanl.gov
epccorrespondence@lanl.gov
lasomailbox@nnsa.doe.gov

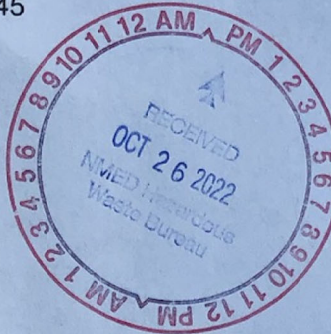


COPY



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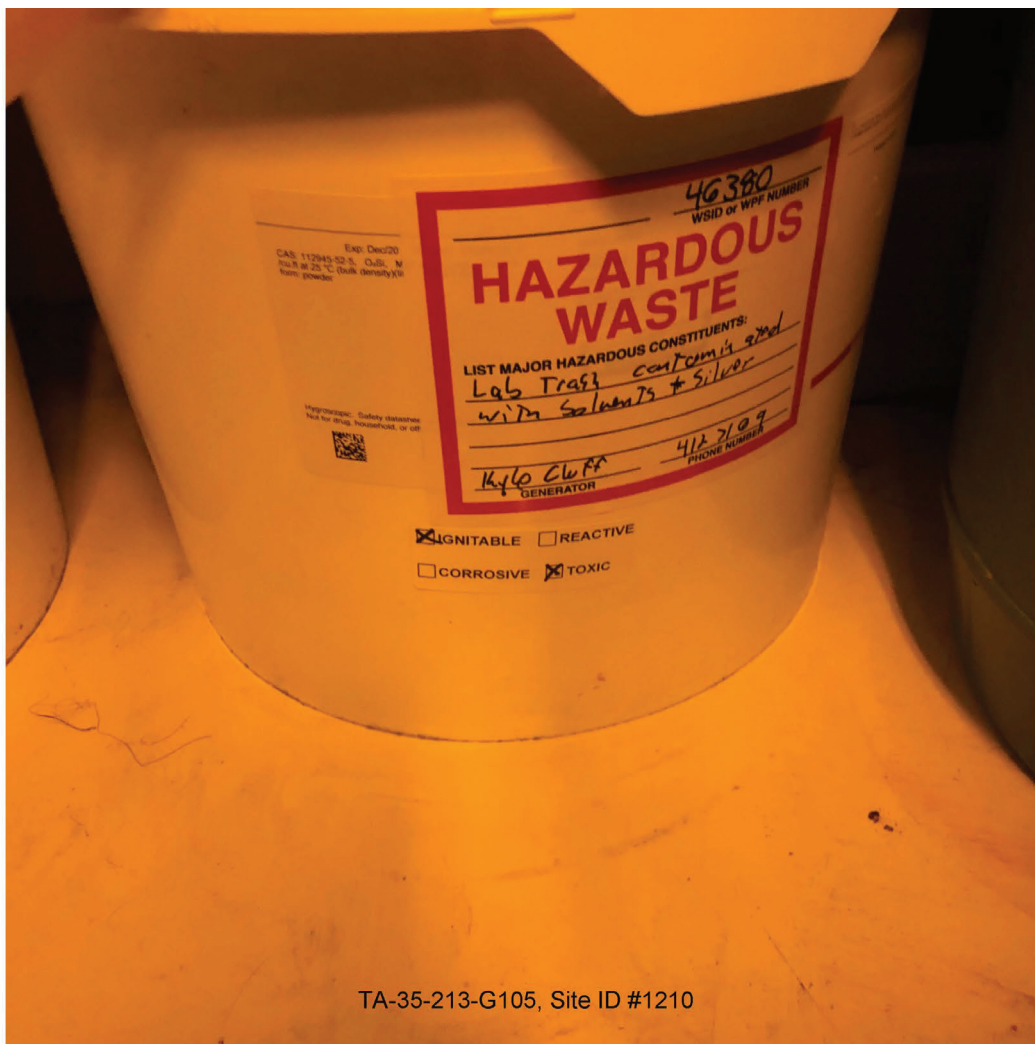
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Attachment 1

**Photograph of container within Satellite Accumulation Area
at Technical Area 35**





TA-35-213-G105, Site ID #1210

Attachment 2

**Affidavit concerning marking containers with indications of hazards
at Technical Area 59**



AFFIDAVIT

- 1. I, Philip John ("PJ") Martinez, am an employee of Triad National Security, LLC ("Triad"), at the Los Alamos National Laboratory (LANL). I have been employed at LANL since 2005.
- 2. On August 10, 2020, the date of the New Mexico Environment Department-Hazard Waste Bureau's ("NMED-HWB") 2020 Resource Conservation and Recovery Act (RCRA) Annual Inspection ("2020 Inspection"), I was employed as the Waste Management Coordinator assigned to TA-59, Site Id #6481. As of August 2020, I had served in this position for approximately 8 years.
- 3. I am familiar with and responsible for hazardous waste management operations and coordination at TA-59, Site Id #6481.
- 4. I am aware that the NMED-HWB issued Triad and the United States Department of Energy, National Nuclear Security Administration ("NA-LA") a violation at TA-59, Site Id #6481 for "observing a container without a hazard indicated on the container" during the 2020 Inspection at TA-59.
- 5. I confirm that on August 10, 2020, in the presence of the NMED-HWB Inspector, the container located at TA-59, Site Id #6481 was labelled with the hazard indicator, bringing the container into compliance.

FURTHER AFFIANT SAYETH NAUGHT.


 PJ Martinez

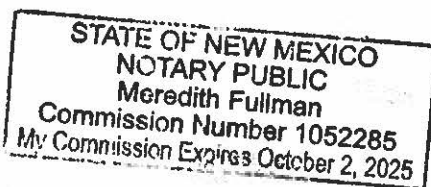
STATE OF NEW MEXICO)
) ss.
 COUNTY OF LOS ALAMOS)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 26 day of October 2022, by P.J. Martinez.


 NOTARY PUBLIC

My Commission Expires:

10/2/2025



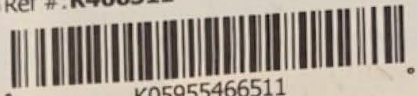
Attachment 3

Photograph of top of universal waste container at Technical Area 55



WHEN FULL CALL
FEDEX FOR PICKUP
800-463-3339
Or Give to your regular
FedEx Ground Driver

Ref #: **K466511**



K05955466511

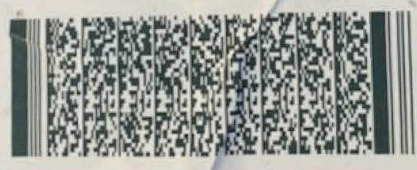
Kit 35

8/1/2018

From: Ronnie Garcia
LANL for US DOE/NNSA
SM-30 Warehouse
Bikini Atoll Rd
Los Alamos, NM 87545

UNIVERSAL WASTE APPROVED

Ship To: Battery Solutions
618 E AUTO CENTER DRIVE
SUITE 111
MESA, AZ 85204



FedEx
Ground
PRP



(9612018) 7346195 02490815

UNIVERSAL WASTE

Accumulation Start Date:

____ / ____ / ____

Battery(ies)

Check the following
box and fill in the
Accumulation Start
Date using a
ballpoint pen.

Attachment 4


Affidavit concerning universal waste container at Technical Area 55



AFFIDAVIT

1. I, Mark Sandoval, am an employee of Triad National Security, LLC ("Triad"), at the Los Alamos National Laboratory (LANL). I have been employed at LANL since 2010.
2. On August 10, 2020, the date of the New Mexico Environment Department-Hazard Waste Bureau's ("NMED-HWB") 2020 Resource Conservation and Recovery Act (RCRA) Annual Inspection ("2020 Inspection"), I was employed as the Waste Management Coordinator assigned to TA-55, Site Id #6636. As of August 2020, I had served in this position for approximately one year and two months.
3. I am familiar with and responsible for hazardous waste management operations and coordination at TA-55, Site Id #6636.
4. I am aware that the NMED-HWB issued Triad and the United States Department of Energy, National Nuclear Security Administration ("NA-LA") a violation at TA-55, Site Id #6636 for "failure to mark or label a container of Universal Waste batteries with the words 'Universal Waste - Batteries' or other phrases" during the 2020 Inspection.
5. I confirm that on August 10, 2020, at the time of inspection, the container located at TA-55, Site Id #6636 did in fact contain a label with the words "universal wastes."
6. I can further confirm that the container at TA-55, Site Id #6636 came from the company that LANL contracts to recycle batteries pre-labelled with "universal wastes" and that such label was located on the top of the container on August 10, 2020, at the time of inspection.

FURTHER AFFIANT SAYETH NAUGHT.



 Mark Sandoval

STATE OF NEW MEXICO)
) ss.
 COUNTY OF LOS ALAMOS)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 12th day of October 2022, by Becky R. Martinez



 NOTARY PUBLIC

My Commission Expires:

August 6, 2023

