



ESHID-603742

MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

February 3, 2023

VIA CERTIFIED MAIL AND EMAIL

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
theodore.wyka@nnsa.doe.gov

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
michael.mikolanis@em.doe.gov

**RE: SETTLEMENT OFFER AND STIPULATED FINAL ORDER
FOR JULY 26, 2022 NOTICE OF VIOLATION
LOS ALAMOS NATIONAL LABORATORY
EPA ID# NM0890010515**

Dear Messrs. Wyka and Mikolanis:

I am writing to offer a settlement of the Notice of Violation ("NOV") issued on July 26, 2022. The NOV resulted from a hazardous waste Compliance Evaluation Inspection, which the New Mexico Environment Department ("NMED") began conducting on August 10, 2020, at Los Alamos National Laboratory ("LANL"), Bikini Atoll Road, SM-30, Los Alamos, New Mexico ("Installation"). The Co-operators of the Installation, U.S. Department of Energy ("DOE") Environmental Management Los Alamos Field Office ("EM-LA")/Newport New Nuclear BWXT-Los Alamos LLC ("N3B") and DOE National Nuclear Security Administration Los Alamos Field Office ("NA-LA")/Triad National Security, LLC ("Triad") provided separate responses to the NOV, dated September 23, 2022 and October, 26, 2022. NA-LA/Triad contend in their response that violation #5 and four of the six counts of violation #6 in the NOV should be rescinded. NMED subsequently met with LANL representatives on several occasions in November and December of 2022 and January of 2023, to discuss the response provided by NA-LA and Triad and to obtain supporting documentation.

Upon review of the supporting documentation provided by NA-LA and Triad, NMED agrees to rescind violation #5 of the July 26, 2022 NOV. NMED declines to rescind the 4 counts of violation #6 of that NOV, representing 4 containers of hazardous waste that were not properly characterized prior to storage. The hazardous portion of the mixed waste is subject to RCRA

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

regulations (RCRA Online (RO) 13004, NMAC 20.4.1, and Permit Part 1.8). LANL, as a large quantity generator of hazardous waste, did not properly evaluate the potential hazards of the waste stream and failed to properly characterize the waste as required under 40 CFR 262.11 and LANL Hazardous Waste Facility Permit Part 2.4.1. Moreover, LANL apparently failed to identify and/or implement additional protective safety measures during waste generation to ensure the waste stream did not contain characteristically ignitable hazardous waste.

Nonetheless, as a result of a review of the information obtained and in the interest of arriving at a settlement of the NOV that encourages protection of human health and the environment, NMED is willing to recalculate the penalties associated with the 4 counts of violation #6 of the NOV, utilizing the Hazardous Waste Management Regulations and the NMED Hazardous Waste Act ("HWA") Civil Penalty Policy. NMED is offering to reduce the penalty for 4 counts of violation #6 from \$40,000 to \$14,000.

The revised total penalty amount accordingly is reduced from \$82,520 to \$56,160. NMED is in receipt of LANL's \$20,000 partial payment of the proposed penalties related to violations #1 and #2, dated September 23, 2022. The remaining balance that would be owed under this settlement offer is \$36,160.

If you accept this settlement offer, then please review the attached Stipulated Final Order and route it for LANL leadership signature(s). Please respond within 2 weeks from the receipt of this letter. If you have any technical questions regarding the inspection findings and penalty calculations, please contact NMED Environmental Scientist Aaron Coffman by phone 505-690-5211 or email at aaron.coffman@env.nm.gov. Please address any written responses to this letter to my attention. Please respond within 2 weeks from the receipt of this letter.

Sincerely,

Rick Shean

Rick Shean
Bureau Chief and Acting CTAP Program Manager
Hazardous Waste Bureau

Digitally signed by
Rick Shean
Date: 2023.02.03
11:00:38 -07'00'

RS: ac

cc: Aaron Coffman, NMED HWB
Neelam Dhawan, NMED HWB

Messrs. Wyka and Mikolanis

February 3, 2023

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Thomas X. Vigil, NMED District II Manager (acting)

Karen Armijo, NA-LA, karen.armijo@nnsa.gov

Patrick L. Padilla, Triad, plpadilla@lanl.gov

Lee Bishop, EM-LA, lee.bishop@em.doe.gov

Christian T. Maupin, N3B, Christian.maupin@em-la.doe.gov

file: Library # 2390

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT)
DEPARTMENT,)
Complainant,)
)
v.)
)
UNITED STATES DEPARTMENT OF)
ENERGY,)
TRIAD NATIONAL SECURITY, LLC AND)
NEWPORT NEWS NUCLEAR BWXT-)
LOS ALAMOS, LLC)
EPA I.D. NM0890010515,)
Respondents)
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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 Respondents, DOE, Triad, and N3B operate a government owned facility under a Treatment, Storage, and Disposal Facility (“TSDF”) Permit, EPA I.D. Number NM0890010515, located at Bikini Atoll Road, SM-30, Los Alamos, New Mexico (“Installation”).
3. Beginning on August 10, 2020, NMED conducted a hazardous waste compliance evaluation inspection (“Inspection”) at the Installation. During the Inspection, the Department observed potential violations of the HWA, the HWMR and the Permit.
4. As a result of the Inspection and in consideration of the documentation and information provided, the Department issued a Notice of Violation (“NOV”) to the Respondents on July 26, 2022. On October 26, 2022 the Respondents submitted the Department a letter that responded to the NOV, provided additional information, and detailed the corrective actions taken by LANL to address the alleged violations.

ALLEGED VIOLATIONS

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

6. All actions required to maintain or restore Respondent’s compliance have been completed.

7. The Respondents do not admit to any of the allegations in the NOV. 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.

8. The Respondent 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 Respondent or any instrumentality of the United States.

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 partial payment of this civil penalty in the amount of \$20,000.00. The Respondents 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

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.

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

11. Except as provided in Paragraph 14 (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 Respondent reserves the right to assert any defenses that it may have.

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

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 Respondent reserves the right to petition for removal of such an action to federal district court. If the Respondent chooses not to petition for removal of such an action to federal

district court, the Respondent 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

14. The Department covenants not to sue or take any administrative or civil action against the Respondents under the HWA, 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.

15. Respondent covenants not to sue the State of New Mexico for any claims deriving from the NOV.

EFFECTIVE DATE

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

INTEGRATION

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

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

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
ENVIRONMENTAL MANAGEMENT**

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

For: **UNITED STATES DEPARTMENT OF ENERGY
NNSA LOS ALAMOS FIELD OFFICE**

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

For: **TRIAD NATIONAL SECURITY, LLC**

By: _____
THOMAS MASON
LABORATORY DIRECTOR
TRIAD

Date: _____

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

By: _____
KIMBERLY LEBAK
PRESIDENT
N3B

Date: _____

APPROVAL OF STIPULATED FINAL ORDER

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