

**STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**ENVIRONMENTAL HEALTH DIVISION, )  
HAZARDOUS WASTE BUREAU, )**

**Complainant )**

**v. )**

**UNITED STATES DEPARTMENT )  
OF ENERGY, and )  
LOS ALAMOS NATIONAL SECURITY, LLC, )**

**Respondents. )**

**LOS ALAMOS NATIONAL LABORATORY )  
LOS ALAMOS COUNTY, NEW MEXICO )**

**COMPLIANCE ORDER  
NO. HWB-14-20 (CO)**

**U. S. DEPARTMENT OF ENERGY’S REQUEST FOR HEARING AND ANSWER TO  
ADMINISTRATIVE ORDER REQUIRING COMPLIANCE AND ASSESSING CIVIL PENALTY**

Respondent U.S. Department of Energy (DOE or Respondent) submits the following as its Answer to Compliance Order HWB-14-20:

**I. FINDINGS**

**A. PERMITTEES AND PERMIT CONDITIONS**

1. Respondent admits the allegation in Paragraph 1 that the New Mexico Environment Department (NMED) is an agency of the executive branch within the government of the State of New Mexico. The remainder of paragraph 1 purports to characterize the Department of Environment Act, which speaks for itself and is the best evidence of its contents.
2. Paragraph 2 is a conclusion of law, which requires no response.

3. The first sentence of Paragraph 3 is a conclusion of law, which requires no response. The second sentence of Paragraph 3 purports to characterize the New Mexico Hazardous Waste Management Regulations (HWMR), which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
4. The allegation in Paragraph 4 is a conclusion of law, which requires no response.
5. Respondent admits the allegations in Paragraph 5.
6. Respondent admits the allegations in Paragraph 6.
7. Respondent admits that DOE and Los Alamos National Security, LLC (LANS) are Co-Permittees under the Los Alamos National Laboratory (LANL) Hazardous Waste Permit (NM 0890010515) (the Permit), which authorizes DOE and LANS to manage, store, and treat hazardous waste at LANL.
8. Paragraph 8 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
9. Paragraph 9 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
10. Paragraph 10 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
11. Paragraph 11 is a conclusion of law, which requires no response. To the extent Paragraph 11 purports to characterize the provisions of the Permit, the Permit speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.

12. Paragraph 12 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
13. Paragraph 13 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
14. Paragraph 14 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
15. Paragraph 15 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.

#### **B. RADIOLOGICAL RELEASE, INVESTIGATION, AND DISCLOSURE**

16. Respondent admits that on February 14, 2014, at approximately 11:14 p.m., there was an incident in the WIPP underground repository, which resulted in the release of americium and plutonium from one or more transuranic mixed waste containers into the environment. To the extent the allegations in paragraph 16 purport to characterize a DOE Office of Environmental Management Accident Investigation Board ("AIB") Accident Investigation Report titled *Radiological Release Event at the Waste Isolation Pilot Plant on February 14, 2014* (Accident Investigation Report). Respondent states that the Accident Investigation Report speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Report are denied. To the extent that Paragraph 16 contains a legal conclusion, Respondent states that no response is required.

17. Respondent admits that on April 22, 2014, AIB released the Phase 1 Accident Investigation Report. To the extent the allegations in Paragraph 17 purport to characterize the AIB Accident Investigation Report, Respondent states the report speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the report are denied. To the extent that Paragraph 17 contains a legal conclusion, Respondent states that no response is required.
18. Respondent admits that an Occurrence Reporting and Processing System Operating Experience Report Notification, (ORPS Report) was issued May 2, 2014. To the extent the allegations in paragraph 18 purport to characterize the ORPS Report, Respondent states the ORPS Report speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Report are denied.
19. The allegations in paragraph 19 purport to characterize the May 16, 2014, WIPP Update. The Update speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Update are denied.
20. The allegations in paragraph 20 contain legal conclusions and purport to characterize the May 19, 2014, Administrative Order (May 19 AO). The document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the May 19 AO are denied.
21. The allegations in paragraph 21 purports to characterize the February 10, 2014, Central Characterization Project ("CCP") Acceptable Knowledge ("AK") Summary Report (CCP-AK-LANL-006, Rev. 13) (AK Summary Report). The AK Summary Report speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the AK Summary Report are denied.
22. Respondent admits the allegation in Paragraph 22.

*Treatment of Waste-Neutralization-without a Permit*

23. The allegation in paragraph 23 purports to quote and characterize the New Mexico HWMR. The New Mexico HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the New Mexico HWMR are denied.
24. The allegation in paragraph 24 purports to quote and characterize the New Mexico HWMR. The New Mexico HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the New Mexico HWMR are denied.
25. The allegation in paragraph 25 purports to characterize the New Mexico HWMR. The New Mexico HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the New Mexico HWMR are denied.
26. The allegation in paragraph 26 purports to quote and characterize the New Mexico HWMR. The New Mexico HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the New Mexico HWMR are denied.
27. The allegation in paragraph 27 purports to quote and characterize the New Mexico HWMR. The New Mexico HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the New Mexico HWMR are denied.
28. The allegation in paragraph 28 purports to quote and characterize the New Mexico HWMR. The New Mexico HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the New Mexico HWMR are denied.
29. The allegation in paragraph 29 purports to quote and characterize a LANL written procedure that was issued on March 20, 2013 (the Waste Characterization, Reduction, and Repackaging Facility Waste Characterization Glovebox Operations, Rev.37). The written procedure speaks for itself and is the

best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the written procedure are denied.

30. Respondent admits that the quote in the first sentence of Paragraph 30, from the July 1, 2014, Addendum, page 3, is accurate. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
31. Respondent admits that Complainant accurately quotes a portion of one sentence from page 3 of the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
32. Respondent admits that Complainant accurately quotes a portion of one sentence from page 3 of the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
33. Respondent admits that Complainant accurately quotes a portion of one sentence from page 3 of the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
34. The allegation in the first sentence of Paragraph 34 constitutes Complainant's characterization of its case, to which no response is required. To the extent a response is required, Respondent denies the allegations.
35. Respondent denies the first portion of the allegation in Paragraph 35 that alleges "The 232 parent nitrate salt-bearing waste containers were not hazardous for corrosivity only." Respondent

affirmatively states that not all of the 232 parent nitrate salt-waste containers were hazardous for corrosivity (D002) and avers that neutralization activities did not occur in all of the 232 nitrate salt-waste drums processed at the Waste Characterization, Reduction, and Repackaging Facility. The remaining allegations of Paragraph 35 contain legal conclusions to which a response is not required. To the extent a response is required, Respondent denies the allegations.

***Treatment of Waste-Adding Absorbent-Without a Permit***

36. The allegations in Paragraph 36 purport to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
37. The allegations in Paragraph 37 purport to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
38. The allegations in Paragraph 38 purport to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
39. Paragraph 39 purports to characterize a LANL procedure that was issued on August 1, 2012 (WCRR-WO-DOP-0233, *WCRRF Waste Characterization Glovebox Operations*, Revision 36). The written procedure speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the procedure are denied.
40. Respondent admits that the quote from the July 1, 2014, Addendum, pages 3-4 is accurate. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
41. Respondent denies the quote in the first sentence is accurate. Respondent affirmatively states that it notified Complainant in the Addendum that the processing of *remediated* nitrate salt-bearing waste

from waste stream LA-MIN02-V.001, *during fiscal years 2012 and 2013*, falls outside the permit exemptions for treatment activities required by NMED rules incorporating 40 C.F.R. §§264.1(g)(6) [and] (10) and 40 C.F.R. §§270.1(c)(2)(iv) and (vii)." (Emphasis added.) Respondent denies the allegation in the second sentence, and affirmatively states that the Addendum states, with regard to the processing of *remediated* nitrate salt-bearing waste from waste stream LA-MIN02-V.001, during fiscal years *2012 and 2013*, (emphasis added) adding absorbents in deviating locations constitutes noncompliance.

42. Paragraph 42 purports to characterize Respondent's September 30, 2014, Response to NMED's August 26, 2014, Request for Information. The Response speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Response are denied.
43. To the extent Paragraph 43 is a conclusion of law, it requires no response. To the extent a response is required, Respondent denies the allegations. To the extent that Paragraph 43 purports to characterize Respondent's September 30, 2014, Response to NMED's August 26, 2014, Request for Information, Respondent states that the Response speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Response are denied.

***Failure to Obtain a Permit to Treat Waste***

44. The allegations in Paragraph 44 purport to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
45. Paragraph 45 purports to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.

46. Paragraph 46 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
47. Respondent admits that the WCCRF is a permitted container storage unit at TA-50-69. To the extent that Paragraph 47 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
48. To the extent Paragraph 48 states a conclusion of law, it requires no response. To the extent Paragraph 48 purports to characterize the provisions of the Permit, the Permit speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
49. Respondent admits that it submitted the Addendum to NMED on July 1, 2014, and that Complainant accurately quotes a portion of one sentence from page 4 of the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
50. To the extent Paragraph 50 contains a legal conclusion, no response is required. To the extent Paragraph 50 purports to characterize the New Mexico HWMR, Respondent states the HWMR speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
51. Respondent admits the allegation in Paragraph 51.
52. Paragraph 52 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.

53. The first sentence of Paragraph 53 contains a legal conclusion, to which no response is required. To the extent a response is required, Respondent denies the allegation. With regard to the second sentence, Respondent admits it notified Complainant in writing of the treatment activities at TA-50-69 on July 1, 2014, but denies the remaining allegations in the second sentence. Respondent avers that on June 3, 2014, DOE and LANS representatives met with NMED officials and provided oral notice of potential noncompliances with the LANL Permit at TA-50-69.
54. Paragraph 54 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
55. The first sentence of Paragraph 55 contains a legal conclusion, to which no response is required. To the extent a response is required, Respondent denies the allegation. With regard to the second sentence, Respondent admits it notified Complainant in writing of the treatment activities at TA-50-69 on July 1, 2014, but denies the remaining allegations in the second sentence. Respondent avers that on June 3, 2014, DOE and LANS representatives met with NMED officials and provided oral notice of potential noncompliances with the LANL Permit at TA-50-69.

***Failure to Notify NMED of Planned Changes***

56. Paragraph 56 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
57. Respondent admits the allegation in Paragraph 57.
58. Paragraph 58 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.

59. Paragraph 59 purports to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
60. To the extent Paragraph 60 characterizes Respondent's September 30, 2014, *Response to NMED's August 26, 2014, Request for Information, Treatment of Waste without a Permit and Failure to Reevaluate Acceptable Knowledge*, and the Respondent's July 1, 2014, Addendum, Respondent states that the documents speak for themselves and no response is required. Any allegations contrary to the plain meaning of these documents are denied. To the extent Paragraph 60 contains a legal conclusion, Respondent states that no response is required, and that to the extent a response is required, the allegation is denied.

***Failure to Adequately Characterize Waste***

61. Paragraph 61 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
62. Paragraph 62 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
63. Paragraph 63 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
64. Respondent admits that Paragraph 64 accurately quotes one sentence from page 4 of the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.

65. Respondent denies the quote in the first sentence of Paragraph 65 is accurate. Respondent affirmatively states that it notified Complainant in the Addendum that, with regard to the processing of *remediated* nitrate salt-bearing waste from waste stream LA-MIN02-V.001, *during fiscal years 2012 and 2013*, operators conducted pH tests and determined that some of the liquids decanted from the parent drum(s) had a pH of less than 2 and were corrosive for D002." (Emphasis added.)
66. Respondent admits the allegation in Paragraph 66 that on September 30, 2014, the Respondent notified NMED that it had assigned HWN D002 (corrosivity characteristic) to 26 of the 29 unremediated nitrate salt-bearing waste containers with free liquid in Dome 231. Respondent avers that it first made this notice during a technical call with NMED on June 5, 2014, and further provided RTR videos and the rationale for addition of the D002 Hazardous Waste Number to the 26 containers in its September 5, 2014 submittal to NMED.
67. To the extent Paragraph 67 contains a legal conclusion, no response is required. To the extent a response is required, Respondent denies the allegation. To the extent Paragraph 67 purports to characterize the CCP AK summary report that was released on February 10, 2014, the document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the report are denied.
68. Respondent admits that on July 30, 2014, it notified NMED that it had assigned HWN D001 (ignitability characteristic) to 57 remediated nitrate salt-bearing waste containers, and to 29 unremediated nitrate salt-bearing waste containers that are in isolation at LANL. To the extent Paragraph 68 purports to characterize the July 30, 2014, Written Notice Regarding Application of EPA Hazardous Waste Number D001 to Certain Nitrate Salt-Bearing Waste Containers at LANL. Respondent states that the Written Notice speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Written Notice are denied.

69. The first sentence of Paragraph 69 purports to characterize Respondent's September 5, 2014, *Response to Information Request Regarding the Los Alamos National Laboratory Nitrate Salt Bearing Waste Container Isolation Plan*. Respondent states that the September 5 Response speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Response are denied. The second sentence of Paragraph 69 contains a legal conclusion, to which no response is required. To the extent a response is required, Respondent denies the allegation.
70. Paragraph 70 purports to characterize a document entitled *Second Addendum, Reporting Additional Instances of Noncompliance with Hazardous Waste Facility Permit and Generator Requirements, Los Alamos National Laboratory*, submitted to NMED on October 21, 2014. Respondent states that the Second Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Second Addendum are denied.
71. To the extent Paragraph 71 contains a legal conclusion, no response is required. To the extent a response is required, Respondent denies the allegation. To the extent Paragraph 71 characterizes the February 10, 2014, CCP AK summary report, Respondent states that the report speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the AK summary report are denied.
72. Respondent admits that the nitrate salt-bearing waste containers that were processed at TA-50-69 were from waste streams LA-MIN02-V.001, LA-CIN02-V.001, LA-MIN04-S.001, and LA-MHD01.001. To the extent the allegations in paragraph 72 purport to characterize Respondent's September 30, 2014, Response, Respondent states the document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of that document are denied.

73. Paragraph 73 purports to characterize Respondent's September 5, 2014, *Response to Information Request Regarding the Los Alamos National Laboratory Nitrate Salt Bearing Waste Container Isolation Plan*. Respondent states that the September 5 Response speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the response are denied.
74. The first sentence of Paragraph 74 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation. Respondent admits the allegation in the second sentence of Paragraph 74. The third sentence of Paragraph 74 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation.
- Failure to Reevaluate AK***
75. Paragraph 75 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
76. The allegations in Paragraph 76 are vague and ambiguous and, on that basis, Respondent denies generally and specifically said allegations.
77. Paragraph 77 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
78. The allegation in the first sentence of Paragraph 78 that "Respondents knew as early as October 2011 that some of the liquid in the nitrate salt-bearing waste containers had a pH below 2," appears to characterize Respondent's September 30, 2014, Response. That document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of

that document are denied. The remainder of the first sentence of Paragraph 78 contains a legal conclusion, to which no response is required. To the extent a response is required, Respondent denies the allegation.

79. Paragraph 79 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation.
80. Respondent admits that Complainant correctly quotes Permit Condition 2.4.7(2). To the extent that Paragraph 80 purports to characterize the provisions of the Permit, Respondent states the Permit speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
81. Respondent admits that Complainant accurately quotes from page 3 of the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Addendum are denied.
82. The first portion of the first sentence of Paragraph 82 purports to characterize the Carlsbad Difficult Waste Team report dated May 8, 2012, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the report are denied. The second portion of the first sentence of Paragraph 82 contains a legal conclusion to which no response is required. To the extent a response is required, Respondent denies the allegation.
83. Paragraph 83 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
84. Paragraph 84 contains a legal conclusion, to which no response is required. To the extent Paragraph 84 alleges that Respondent never performed a re-evaluation of initial characterization or annual verifications, Respondent denies those allegations.

*Mixing Incompatible Waste/Materials in a Container*

85. Paragraph 85 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
86. Paragraph 86 purports to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
87. Paragraph 87 purports to characterize the New Mexico HWMR, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
88. Paragraph 88 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
89. Paragraph 89 purports to characterize U.S. Department of Transportation Regulations, which speak for themselves and are the best evidence of their contents. Any allegations contrary to the plain language, meaning, or context of the regulations are denied.
90. Paragraph 90 purports to characterize Respondent's September 5, 2014, *Response to Information Request Regarding the Los Alamos National Laboratory Nitrate Salt Bearing Waste Container Isolation Plan*. Respondent states that the September 5 Response speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of that document are denied.
91. Respondent admits the allegation in Paragraph 91 that it submitted the Second Addendum to NMED on October 21, 2014 and that Complainant accurately quotes a portion of one sentence from page 3 of

the Addendum. Respondent further states that the Addendum speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Second Addendum are denied.

92. Respondent admits the allegation in Paragraph 92 that incompatible materials were mixed when organic kitty litter was added to nitrate salt waste. Respondent denies that organic kitty litter was placed in 672 containers. To the extent Paragraph 92 characterizes Respondent's September 30, 2014, *Response to NMED's August 26, 2014, Request for Information, Treatment of Waste without a Permit and Failure to Reevaluate Acceptable Knowledge*, the response speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the response are denied.
93. The allegation in paragraph 93 contains a legal conclusion, to which no response is required. To the extent a response is required, Respondent denies the allegation. To the extent Paragraph 93 purports to characterize the Respondent's September 30, 2014, *Response to NMED's August 26, 2014, Request for Information, Treatment of Waste without a Permit and Failure to Reevaluate Acceptable Knowledge*, and the Respondent's July 1, 2014, Addendum, Respondent states that the documents speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain language, meaning, or context are denied. To the extent that a response is required, Respondent admits that incompatible materials were mixed when an organic neutralizer was added to liquid from parent nitrate salt-bearing waste containers at TA-50-69 and the neutralized liquid was then mixed with the organic absorbent and placed into daughter containers. Respondent affirmatively states that not all nitrate salt-bearing daughter and parent containers held material mixed with organic neutralizer and organic absorbents.

94. The allegation in paragraph 94 contains a legal conclusion, and purports to characterize the Respondent's September 30, 2014, *Response to NMED's August 26, 2014, Request for Information, Treatment of Waste without a Permit and Failure to Reevaluate Acceptable Knowledge*, and the Respondent's July 1, 2014, Addendum. The documents speak for themselves and are the best evidence of their contents. Any allegations contrary to their plain language, meaning, or context are denied. To the extent that a response is required, Respondent admits the allegation in Paragraph 94 that it combined materials (organic absorbent and organic neutralizer) that were incompatible with waste (nitrate salts). Respondent denies that this activity occurred with regard to 672 containers. The remaining allegations in Paragraph 94 contain legal conclusions to which no answer is required.
95. Paragraph 95 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation.

***Failure to Notify NMED of Noncompliant Acts or Omissions that Endangered Human Health and the Environment***

96. Paragraph 96 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
97. Paragraph 97 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.
98. Paragraph 98 purports to characterize the provisions of the Permit, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the Permit are denied.

99. Paragraph 99 purports to characterize the Carlsbad Difficult Waste Team report dated May 8, 2012, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the report are denied.
100. Respondent admits that Complainant accurately paraphrases a portion of the September 30, 2013 DOE/IG Management Alert (Management Alert). To the extent Paragraph 100 purports to characterize the Management Alert, Respondent states that the document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the document are denied.
101. Respondent admits that Complainant accurately quotes from the Management Alert. To the extent that Paragraph 101 purports to characterize the Management Alert, Respondent states the document speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the document are denied.
102. Paragraph 102 purports to characterize a DOE/IG Report, which speaks for itself and is the best evidence of its contents. Any allegations contrary to the plain language, meaning, or context of the report are denied.
103. Paragraph 103 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation.
104. Paragraph 104 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation.
105. Respondent admits the allegations in Paragraph 105. Respondent avers that it added Waste Lock 770®, a non-biodegradable carbon-based polymer absorbent, to one drum of nitrate-salt bearing waste in October 2011.

106. Respondent admits that it began using organic neutralizer to treat liquids from nitrate salt-bearing waste containers at TA-5-69. Respondent denies this began in October 2011.
107. Based on currently available information, Respondent admits the allegation in Paragraph 107.
108. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 108, and, on that basis, denies the allegations.
109. Respondent is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 109 of the Complaint, and, on that basis, denies the allegations.
110. Paragraph 110 contains legal conclusions, to which no response is required. To the extent a response is required, Respondent denies the allegation.

## **II. VIOLATIONS**

111. Paragraph 111 sets forth legal conclusions to which no response is required.
112. Paragraph 112 sets forth legal conclusions to which no response is required.
113. Paragraph 113 sets forth legal conclusions to which no response is required.
114. Paragraph 114 sets forth legal conclusions to which no response is required.
115. Paragraph 115 sets forth legal conclusions to which no response is required.
116. Paragraph 116 sets forth legal conclusions to which no response is required.
117. Paragraph 117 sets forth legal conclusions to which no response is required.
118. Paragraph 118 sets forth legal conclusions to which no response is required.
119. Paragraph 119 sets forth legal conclusions to which no response is required.
120. Paragraph 120 sets forth legal conclusions to which no response is required.
121. Paragraph 121 sets forth legal conclusions to which no response is required.
122. Paragraph 122 sets forth legal conclusions to which no response is required.
123. Paragraph 123 sets forth legal conclusions to which no response is required.

124. Paragraph 124 sets forth legal conclusions to which no response is required.
125. Paragraph 125 sets forth legal conclusions to which no response is required.
126. Paragraph 126 sets forth legal conclusions to which no response is required.
127. Paragraph 127 sets forth legal conclusions to which no response is required.
128. Paragraph 128 sets forth legal conclusions to which no response is required.

### **III. SCHEDULE OF COMPLIANCE**

129. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
130. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
131. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
132. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
133. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
134. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
135. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.
136. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.

137. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.

#### **IV. CIVIL PENALTY**

138. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.

139. The allegations in this paragraph require no answer; however, Respondent requests a Hearing to contest the allegations in this Complaint and the proposed penalty.

#### **V. NOTICE OF POTENTIAL ADDITIONAL PENALTIES**

140. The allegation in this paragraph requires no answer.

141. The allegation in this paragraph requires no answer.

#### **VI. RIGHT TO ANSWER AND REQUEST A HEARING**

142. The allegation in this paragraph requires no answer; however, Respondent will request a Hearing to contest the allegations in this Complaint and the proposed penalty.

143. The allegation in this paragraph requires no answer.

#### **VII. FINALITY OF ORDER**

144. The allegation in this paragraph requires no answer.

#### **VIII. SETTLEMENT CONFERENCE**

145. The allegation in this paragraph requires no answer.

146. The allegation in this paragraph requires no answer.

147. The allegation in this paragraph requires no answer.

#### **IX. TERMINATION**

148. The allegation in this paragraph requires no answer.

## **X. COMPLIANCE WITH OTHER LAWS**

149. The allegation in this paragraph requires no answer.

## **XI. AFFIRMATIVE DEFENSES**

With respect to the civil penalties proposed by Complainant for those findings and/or conclusions admitted to by Respondent DOE, it asserts the following defenses:

### **FIRST AFFIRMATIVE DEFENSE**

Respondent's Answer and each denial contained therein constitute Respondents' first affirmative defense.

### **SECOND AFFIRMATIVE DEFENSE**

Complainant has failed to state a claim against Respondent.

### **THIRD AFFIRMATIVE DEFENSE**

Complainant has failed to state the nature of the violation with reasonable specificity as required by NMSA 1978 §74-4-10(A)(1).

### **FOURTH AFFIRMATIVE DEFENSE**

With respect to the civil penalties proposed by Complainant for those findings and/or conclusions admitted to by Respondent DOE, it asserts the following defenses:

- A. Complainant failed to consider the good faith efforts of Respondent DOE to comply with the alleged applicable requirements, pursuant to 74-4-10.B NMSA 1978;
- B. Complainant failed to consider the seriousness of the violation, pursuant to 74-4-10.B NMSA 1978;

- C. Complainant failed to adhere to the Hazardous Waste Penalty Policy adopted by Complainant in March 2007 or U.S. EPA's *RCRA Civil Penalty Policy* dated June 2003;
- D. Complainant's imposition of penalties is arbitrary, capricious and without substantial basis in law or in fact;
- E. Complainant improperly imposed penalties for violations of law which did not occur.
- F. The penalty assessed against the Respondent by Complainant is grossly disproportionate to other fines assessed against other permittees operating under Treatment, Storage, and Disposal Facility Permits issued pursuant to the New Mexico Hazardous Waste Act.
- G. The fine assessed against the Respondent by Complainant is based upon improper, multiplicitous allegations of violations on the Hazardous Waste Management regulations.
- H. Complainant's assessment of civil penalties is excessive and does not meet the statutory criteria of NMSA 1978, §74-4-10(B);

#### **FIFTH AFFIRMATIVE DEFENSE**

The Complainant's alleged violations and penalty assessed against the Respondent and its contractor by Complainant against operations of the Department of Energy authorized under the Atomic Energy Act of 1954 unconstitutionally limits operations of the Department in violation of the Supremacy Clause of the United States Constitution.

## **SIXTH AFFIRMATIVE DEFENSE**

The U.S. Environmental Protection Agency (EPA) has authorized the State of New Mexico to implement the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6901 to 6992k. For purposes of RCRA, source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq. (AEA) are not solid wastes and therefore not subject to RCRA. NMED has issued a hazardous waste facility permit for the LANL facility. Waste treated, stored, generated, and disposed of at the LANL facility includes mixed TRU waste. NMED does not have jurisdiction for regulating the AEA radiological components of the mixed TRU waste at LANL. To the extent that the violations asserted in the ACO rely upon a release of materials exclusively regulated under the AEA, NMED lacks jurisdiction over such materials.

## **XII. RESERVATION OF RIGHTS**

Respondent reserves all its rights, defenses, and claims, including its right to amend, supplement and/or correct this pleading.

## **XII. REQUEST FOR HEARING**

Respondent respectfully requests a hearing on this matter pursuant to Section 74-4-10H of the HWA and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC.

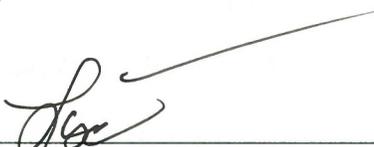
**WHEREFORE**, Respondent DOE respectfully requests that the determination be made that it did not commit the violations alleged in the Compliance Order unless specifically admitted to by Respondent DOE in this Answer, that the civil penalties proposed by Complainant be denied where the underlying alleged

violation has been denied by Respondent DOE in this Answer, that the civil penalties proposed by Complainant be reduced or mitigated where the underlying alleged violation has been admitted to by Respondent in this Answer, that the schedule of compliance and actions thereunder ordered by Complainant be denied and that all other such relief as the Hearing Officer deems just and appropriate be granted.

On behalf of respondent, the U.S. DEPARTMENT OF ENERGY, I certify and affirm that the information contained herein is, to the best of my belief, true and correct.

BY:

  
\_\_\_\_\_  
Silas DeRoma, Field Office Counsel  
Los Alamos Field Office  
3747 West Jemez Road  
Los Alamos, NM 87544  
(505) 667-4668

  
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Lisa Cummings, Staff Attorney  
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Los Alamos, NM 87544  
(505) 665-9172

**Certificate of Service**

I hereby certify a copy of the foregoing U. S. Department Of Energy's Request For Hearing And Answer To Administrative Order Requiring Compliance And Assessing Civil Penalty was hand-delivered on the following parties of record on the 9<sup>th</sup> day of January, 2015:

Jeffrey M. Kendall  
Office of General Counsel  
General Counsel  
New Mexico Environment Department  
Harold Runnels Building  
1190 St. Francis Dr., Suite N-4050  
Santa Fe, NM 87505

Susan M. McMichael, Counsel  
Los Alamos National Security, LLC  
PO Box 1663, Los Alamos NM, 87544  
(505) 667-3766

and that further that the original and one copy of Compliance Order No. HWB-14-20 (CO) were filed with the Hearing Clerk at the following address:

Sally Worthington, Hearing Clerk  
New Mexico Environment Department  
1190 Saint Francis Drive, S-2103  
P.O. Box 5469  
Santa Fe, New Mexico 87502

BY:

  
\_\_\_\_\_  
Silas DeRoma, Site Office Counsel  
Los Alamos Site Office  
3747 West Jemez Road  
Los Alamos, NM 87544  
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