EM U.S. Department of Energy
Office Of Environmental Management

Lawrence Berkeley National Laboratory Compliance Order, October 6, 1995

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:	)	
	)	
LAWRENCE BERKELEY NATIONAL LABORATORY.	)	COMPLIANCE ORDER HWCA #95/96-016
	)	
U.S. DEPARTMENT OF ENERGY,	)	
	)	
Respondent.	)	
	)	

Federal Facility Compliance Act Order for Lawrence Berkeley National Laboratory

This Order is issued by the California Environmental Protection Agency, Department of Toxic Substances Control (DTSC) to require compliance by the United States Department of Energy (DOE) with a Site Treatment Plan for the treatment of mixed waste at Lawrence Berkeley National Laboratory (LBNL) pursuant to California Health & Safety Code section 25187 and section 3021(b) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6939c), as amended by the Federal Facility Compliance Act of 1992 (FFCA) (Pub. L. 102-386, 106 Stat. 1505 (1992)).

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I. Background/History

A. DTSC is the agency within the executive branch of the California state government charged with administration and enforcement of the California Hazardous Waste Control Act (Cal. Health & Saf. Code § 25100 *et seq.*).

B. Respondent is the DOE. The DOE is an agency of the federal government and the owner and/or operator of LBNL.

C. LBNL is located at the northeast perimeter of the U.C. Berkeley campus in Berkeley, California.

D. On October 6, 1992, Congress passed the FFCA. The FFCA requires that for each DOE facility at which it generates or stores mixed waste, DOE must prepare a Site Treatment Plan (STP) for developing treatment capacities and technologies to treat all the facility's mixed waste, regardless of the time it was generated, to the standards set forth in RCRA section 3004(m) of RCRA that are required for waste subject to the land disposal prohibition.

E. The STP required by the FFCA must be submitted to the appropriate State regulatory officials in the State where the facility is located, provided the state has (1) authority under state law to prohibit land disposal of mixed waste until the waste has been treated, (2) authority under state law to regulate the hazardous components of mixed waste, and (3) authorization from EPA to regulate the hazardous components of mixed waste. The State of California meets these criteria. Accordingly, on March 31, 1995, DOE submitted its proposed STP to DTSC for review, public comment and approval.

F. On August 23, 1995, DTSC gave the public notice of an opportunity to comment to DTSC on the STP as it was proposed to be approved by DTSC with modifications. DTSC provided public notice of the availability of the STP and an opportunity to comment by placing the notice in the Berkeley Californian, which serves the Berkeley area, on August 23, 1995. The notice provided for a period of thirty (30) days to comment. During the period of public comment, the STP was available at DOE's Oakland office, at DTSC and in and at the Berkeley Public Library on Kittredge Road in Berkeley, California to assure that the STP was reasonably available to members of the public.

G. DTSC approved the STP with modifications on October 6, 1995. The approved STP is incorporated by reference and attached hereto as Exhibit A to this Order.

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II. Parties Bound

This Order and the STP, attached hereto, shall apply to and be binding upon Respondent and its respective successors in interest and assigns. Respondent's obligations under this Order shall be joint and several. Respondent shall notify its agents, employees, current operating and other contractors at LBNL, and all subsequent operating and other contractors and LBNL of the existence of this Order, and Respondent shall direct them to comply fully with the requirements of this Order and the STP in all contracts and subcontracts entered into to carry out the requirements of this Order.

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III. Jurisdiction and Authority

A. This Order is issued pursuant to section 25187 of the HWCA and Section 3021(b) of RCRA, as amended by the FFCA, along with Executive Order 12088, which requires each department, agency and instrumentality of the federal government engaged in the disposal or management of hazardous waste to comply with all federal and state requirements respecting the control and abatement of hazardous waste disposal and management.

B. DTSC is the department within the California Environmental Protection Agency that has (1) authority under State law to prohibit land disposal of mixed waste until the waste has been treated, (2) authority under State law to regulate the hazardous components of mixed waste, and (3) authorization from EPA under Section 3006 of RCRA to regulate the hazardous components of mixed waste, as such authorities are described in Section 3021(b) of RCRA, as amended by the FFCA.

C. DOE is a department of the executive branch of the federal government which generates, transports, and manages hazardous waste, including mixed waste, at LBNL and is therefore subject to and must comply with all applicable federal and state requirements respecting hazardous and mixed waste, including the HWCA and 22 CCR Division 4.5.

D. This Order fulfills the requirements of RCRA section 3021(b).

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IV. Definitions

Except as provided below or otherwise explicitly stated herein, the terms used in this Order shall have the same meaning as used in the HWCA (Cal. Health & Safety Code § 25100 *et seq.*), 22 CCR, and RCRA, as amended by the FFCA.

A. "Atomic Energy Act" or "AEA" means the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 *et seq.*).

B. "Days" means calendar days, unless otherwise specified. Any notice, deliverable, or other requirement that under the terms of this Order would be due on a Saturday, Sunday or a state or federal holiday shall be due the first business day following the Saturday, Sunday or state or federal holiday.

C. "DOE" means the United States Department of Energy or any successor agencies, and its

employees or authorized representatives.

D. "DTSC" means the California Department of Toxic Substances Control, or any successor agencies, and its employees or authorized representatives.

E. "EPA" means the United States Environmental Protection Agency or any successor agencies, and its employees or authorized representatives.

F. "FFCA" means the Federal Facility Compliance Act of 1992 (Pub. L. 102-386, 106 Stat. 1505 (1992)).

G. "Fiscal year" means the federal fiscal year, which begins on October 1 of one calendar year and extends through September 30 of the following calendar year.

H. "Hazardous Waste" means hazardous waste as defined at section 25117 of the HWCA and section 66260.10 of 22 CCR, as they may be amended.

I. "HWCA" means the California Hazardous Waste Control Act (Cal. Health and Saf. Code § 25100, *et seq.*).

J. "Land Disposal Restrictions" or "LDR" means the land disposal restrictions set forth in the HWCA section 25179.6 and 22 CCR section 66268.

K. "LBNL" means the Lawrence Berkeley National Laboratory including its facilities and installations in or near Berkeley, California. A copy of a map delineating the physical boundaries of LBNL is attached hereto as Exhibit B and incorporated herein by this reference.

L. "Milestones" means fixed, firm, and enforceable obligations of DOE. Milestones have both an event and a date component. Milestones must be completed in accordance with the provisions of the STP.

M. "Mixed Waste" means waste that contains both a hazardous waste, as defined by RCRA, and source, special nuclear, or byproduct material regulated under the federal Atomic Energy Act of 1954.

N. "Off-site" means a location other than at LBNL.

O. "On-site" means a location at LBNL as described in Exhibit B to this Order.

P. "Order" means this document and all attachments to this document referred to herein, including the STP in two volumes, Exhibit A to this Order.

Q. "Parties" means DTSC and DOE.

R. "RCRA" means the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, as amended by the FFCA.

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V. Covered Matters

This Order addresses LDR requirements pertaining to storage and treatment of covered waste at LBNL regardless of the time of generation and accumulation. Covered wastes are all mixed waste at GA identified in the STP or added to the STP in accordance with section 2.4 of the STP, except those mixed wastes that (1) meet LDR requirements, regardless of the time of generation or that (2) are being stored or will be stored when generated solely for the purpose of accumulating sufficient quantities of mixed waste necessary to facilitate proper recovery, treatment, or disposal.

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VI. Site Treatment Plan

The STP contains two volumes and is intended to bring LBNL into compliance with LDR storage prohibitions under the HWCA and RCRA. The Compliance Plan Volume (CPV) of the STP provides overall schedules for achieving compliance with LDR storage and treatment requirements for mixed waste at LBNL based on milestones as defined in Section IV (Definitions). The Compliance Plan includes a schedule for the submittal of applications for permits, construction of treatment facilities, technology development, off-site transportation for treatment, and the treatment of mixed wastes in full compliance with the HWCA and 22 CCR section 66260 through 66270. The Background Volume of the STP contains progress reports and other information. Respondent shall carry out all activities in accordance with the schedules and requirements set forth in the STP and this Order.

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VII. Termination of Order with Respect to Covered Waste

The applicable requirements of this Order shall terminate with respect to a covered waste in accordance with section 2.7 of the CPV.

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VIII. Amendments to the Order

This Order may be amended by agreement of the Parties. An amendment shall be in writing and signed by the Parties and shall not become effective until approved in writing by DTSC.

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IX. Project Managers

Within ten (10) days of the effective date of this Order, the Parties shall each designate a Project Manager. Each Party shall notify the other in writing of the Project Manager it has selected and of that Project Manager's address. Each Project Manager shall be responsible for overseeing the implementation of this Order. Either Party may change its designated Project Manager by notifying the other Party, in writing, ten (10) days before the change, to the extent possible. To the extent possible, communications between the Parties concerning the terms and conditions of this Order shall be directed through the Project Managers at the addresses listed below:

DTSC Project Manager	DOE Project Manager

Chester M. Kawashige
DTSC
P.O. Box 806, Mail stop HQ-10
Sacramento, CA 95812-0806

Dave Osugi
Mixed Waste Project Manager
U.S. Department of Energy
Oakland Operations
1301 Clay Street, Room 700N
Oakland, CA 94612-5208

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X. Site Access

DOE shall at all reasonable times afford DTSC, its contractors, designees, and agents access to LBNL, with or without prior notice, for the purpose of verifying DOE's compliance with this Order. DOE shall provide an authorized representative to accompany DTSC's employees or contractors while at LBNL. DTSC shall be permitted to enter LBNL to review DOE's progress and/or the progress of DOE's contractors in carrying out the activities under this Order including, but not limited to, the following: conducting tests and sampling which DTSC deems necessary, verifying data submitted to DTSC by DOE, and conducting interviews, as necessary, with DOE's personnel. DTSC, its contractors, designees, and agents shall abide by DOE and LBNL site-specific safety requirements and procedures for access to and while at LBNL. Nothing in this Order shall preclude DTSC from exercising any authority to gain access to LBNL or to obtain or gather data and information at LBNL otherwise provided for by law.

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XI. Exchange of Documents

Whenever the terms of this Order require exchanges of documents, such exchanges shall be made by mail, by facsimile if followed within twenty-four (24) hours by a mailed copy, or by hand delivery to the Project Managers at the address listed above in Section IX (Project Managers), unless those individuals or their successors give notice in writing to the Parties of a change in designated recipient or address. Exchanges of documents required under this Order shall be complete upon mailing or upon hand delivery to the Project Manager.

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XII. Documents, Information, and Reporting Requirements

A. **Exchange of Information.** DOE shall cooperate fully in providing information concerning the status and progress of the activities covered by this Order as requested by DTSC. No communications of this type shall alter or waive any obligations of DOE under this Order, and no guidance, suggestions, or comments by DTSC shall be construed as relieving DOE of its obligation to obtain formal approval where such approval is required by this Order and to comply with the terms of this Order. DOE is encouraged to confer with DTSC at any time prior to the submission of any proposals, plans, studies, reports, updates, or notifications required by this Order.

B. **Records Inspection and Copying**. DOE shall permit DTSC, its contractors, designees and agents to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and analytical data, in any way pertaining to the activities required by this Order, with the

exception of privileged material, and subject to the limitations of the AEA concerning the handling of unclassified controlled nuclear information, restricted data, and national security information. If DOE asserts a claim of privilege over any material, it shall identify the specific record, file, photograph, document, or writing, or portion thereof, over which the claim of privilege is asserted, and shall describe the nature of the privilege with sufficient specificity for a court to rule on the propriety of the claim. DOE shall not assert any privilege concerning any sampling or analytical data.

C. **Reporting Requirements**. DOE shall carry out all reporting requirements through the designated Project Managers.

D. **Certification Statement**. DOE shall provide a certification statement with the submission of any documentation required pursuant to this Order, including without limitation, reports due per CPV section 2.3, proposed revisions under CPV section 2.5 and the Certificate of Completion required to terminate this Order under Section VII (CPV section 2-7). Each such certification statement shall be signed by a responsible official of DOE. Each such certification statement shall aver that the document or other submission is "true, accurate, and complete". If personal verification by the responsible official is not possible, then the certification statement shall aver that another person, acting under the direct instructions and under the supervisory authority of the responsible official, verified that the document or other submission is "true, accurate, and complete".

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XIII. Reservation of Rights/Enforceability

A. **Reservation of Rights**. Notwithstanding any other provision of the Order, DTSC reserves the right to pursue civil or administrative relief or refer a criminal action for any violations of state or federal law, past or future, which are not the subject matter of this Order. DTSC reserves the right to take emergency response action at property owned or controlled by DOE in the event conditions pose an imminent and substantial endangerment to human health or the environment. DTSC specifically retains the right to conduct other environmental studies, investigations, monitoring, or emergency activities at property owned or controlled by DOE, and to enforce all laws, statutes and regulations DTSC is authorized to enforce. DTSC's failure to exercise any power, authority, or rights under this Order shall not be construed as a waiver or relinquishment of such power, authority or right at other times or under other circumstances.

B. **Enforcement**. In the event DOE fails to comply with the terms of this Order, including those that have not been resolved pursuant to the dispute resolution mechanism under Section 2.10 of the CPV, this Order shall be enforceable by DTSC by the filing of a civil action in either state or federal court.

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XIV. Civil Penalties

If DOE fails to comply with the provisions of this Order, DTSC may assess a civil penalty as provided for pursuant to the HWCA.

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XV. Creation of Danger

A. Notwithstanding any other provision of this Order, if DTSC determines that any activity set forth in the STP, even though carried out in compliance with this Order, has caused or may cause a dangerous release of a mixed waste or may pose an imminent or substantial endangerment to public health or the environment, DTSC may direct DOE to stop further implementation of this Order as it relates to the activities creating the danger for such period of time as may be needed to abate any such release or threat or to undertake any action which DTSC determines is necessary to abate such release or threat.

B. Following a stoppage of work pursuant to this section, the Parties shall meet to discuss the resumption of activities and any amendments to this Order and/or to the STP that are necessary as a result of the stoppage of work. DTSC agrees that any milestone activities which were stopped pursuant to a DTSC directive shall be extended for a period equal to the period during which the work was stopped plus a reasonable amount of time to resume activities.

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XVI. Termination

This Order shall terminate in accordance with section 2.7 of the CPV.

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XVII. Compliance with Other Applicable Law

This Order shall not in any way relieve DOE from its obligation to comply with any of the applicable provisions of the HWCA or its implementing regulations, RCRA or its implementing regulations, or any permit, closure or post-closure plan, hazardous waste management requirement, order or agreement issued or entered into thereunder. This Order shall not relieve DOE from its obligation to comply with any other applicable federal, state or local law, regulation, order, permit or any other agreement.

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XVIII. Further Dialogue between DOE and DTSC

Unless DOE/OAK and DTSC agree that no modification and/or amendment to this Order and/or to the STP is warranted, DOE/OAK and DTSC shall begin a good faith dialogue in January 1999 to determine the extent to which the milestone and funding structure of the STP should be modified and/or amended, considering DOE/OAK and DTSC's experience in implementing this Order to date, the most recent information on current and projected funding availability, and the status of major technical issues that are expected to affect the management of mixed waste across DOE sites. If DOE/OAK and DTSC agree that a modification of, and/or amendment to, this Order and/or STP is warranted, such modification(s) and/or amendment(s) shall be completed no later than September 30, 1999. Nothing in the STP or this Order will be deemed changed except by the Parties' express agreement.

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XIX. Severability

The provisions of this Order are severable. If any provision of this Order is declared by a court of law to be invalid or unenforceable, all other provisions of this Order shall remain in full force and effect.

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XX. Effective Date

The effective date of this Order shall be the date on which it is signed by DTSC.

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XXI. Integration

This Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this Order or by further written agreement.

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XXII. Section Headings

The section headings set forth in this Order are included for convenience and reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Order.

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XXIII. California Law

This Order shall be governed, performed and interpreted under the laws of the State of California.

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XXIV. Representative Authority

The undersigned representative of each party to this Order certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to execute and legally bind that party to this Order.

Dated: October 6, 1995 DEPARTMENT OF TOXIC SUBSTANCES CONTROL

By: Ted N. Rauh
Deputy Director
Hazardous Waste Management Program

Approved as to form and content:

Dated: October 6, 1995 U.S. DEPARTMENT OF ENERGY

By: James T. Davis

Assistant Manager for Environmental
Management
U.S. Department of Energy
Oakland Operations Office

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