

**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. NM 0890010515,)	
)	
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, DOE, Triad and N3B are the “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 (collectively, the Department and Respondents are the “Parties”). 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 Respondent DOE owns the Los Alamos National Laboratory (“LANL”) located at Bikini Atoll Road, SM-30, Los Alamos, New Mexico (“Facility”).

3. Respondents Triad and N3B operate specific hazardous waste management units under a Hazardous Waste Facility Treatment and Storage Permit, EPA I.D. Number NM0890010515, located at Bikini Atoll Road, SM-30, Los Alamos, New Mexico (“Permit”).

4. Beginning on August 10, 2020, NMED conducted an annual hazardous waste compliance evaluation inspection (“Inspection”) at the Facility. During the Inspection, the Department observed potential violations of the HWA, the HWMR, and the Permit.

5. As a result of the Inspection and in consideration of the documentation and information provided, on July 26, 2022, the Department issued a NOV with proposed penalties to the Respondents.

6. On August 25, 2022, the Department received a response associated with the units operated by N3B, covering alleged violations referenced in 8.a) and 8.b) below. On September 13, 2022, N3B submitted an associated payment for such alleged violations in the amount of \$20,000.

7. On October 26, 2022, the Department received a response associated with the units operated by Triad, covering alleged violations referenced in 8.c), 8.d), 8.e) and 8.f) below, provided additional information, and detailed the corrective actions taken to address the alleged violations.

ALLEGED VIOLATIONS

8. The Department alleged the following violations in the July 26, 2022 NOV:

- 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.

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

10. The Respondents do not admit to any of the allegations in the July 26, 2022 NOV and furthermore do not admit to or agree with the regulatory citations in the Department’s revised Penalty Computation Summary. Nevertheless, to avoid further legal proceedings, pursuant to 20.1.5.600(B)(2) NMAC, the Department and the Respondents agree to the terms and conditions in this Order to resolve the alleged violations in the July 26, 2022 NOV.

11. The Respondents admit to the jurisdictional allegations of this Order and consent 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 any Respondents or any instrumentality of the United States.

12. In compromise and settlement of the alleged violations in the July 26, 2022 NOV, the Parties agree that the Respondents shall pay a civil penalty of \$56,160.00. The Department is in receipt of Respondent N3B's partial payment of this civil penalty in the amount of \$20,000.00.

13. Respondent Triad 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

14. 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.

15. 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

16. Except as provided in Paragraph 19 (Covenants Not to Sue), the Department reserves all of the powers, authorities, rights, and remedies, whether administrative or judicial, civil or

criminal, legal or equitable, to enforce the requirements of the HWA, HWMR, or Permit, for any past, present or future violations not addressed in the July 26, 2022 NOV. In any such action, the Respondents reserve the right to assert any defenses that it may have.

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

18. In the event that the Department elects to file a judicial action to enforce this Order, the Department shall file such action in the First Judicial District Court of Santa Fe County, New Mexico. The Respondents reserve the right to petition for removal of such an action to federal district court. If the Respondents choose not to petition for removal of such an action to federal district court, the Respondents 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

19. The Department covenants not to sue or take any administrative or civil action against the Respondents under the HWA and HWMR for any of the facts or violations alleged in the July 26, 2022 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.

20. Respondents covenant not to sue the Department for any of the facts or violations alleged in the July 26, 2022 NOV or this Order.

EFFECTIVE DATE

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

INTEGRATION

22. 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

23. This Order shall be binding upon the Department and its successor agencies and shall be binding upon the Respondents and on their successors.

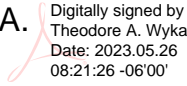
AUTHORITY OF SIGNATORIES

24. 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: May 9, 2023
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JAMES C. KENNEY
SECRETARY OF ENVIRONMENT

For: **UNITED STATES DEPARTMENT OF ENERGY,
NATIONAL NUCLEAR SECURITY ADMINISTRATION, LOS ALAMOS
FIELD OFFICE**

By:  _____ Date: May 26, 2023
Theodore A. Wyka
Date: 2023.05.26 08:21:26 -06'00'
THEODORE WYKA
FIELD OFFICE MANAGER

For: **UNITED STATES DEPARTMENT OF ENERGY,
ENVIRONMENTAL MANAGEMENT,
LOS ALAMOS FIELD OFFICE**

By: **Michael A. Mikolanis**
MICHAEL MIKOLANIS
FIELD OFFICE MANAGER

Digitally signed by
Michael A. Mikolanis
Date: 2023.05.17
10:54:29 -06'00'

Date: May 17, 2023

For: **TRIAD NATIONAL SECURITY, LLC**

By: 
THOMAS MASON
LABORATORY DIRECTOR

Date: 04.05.23

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

By: **Kimberly Lebak**
KIMBERLY LEBAK
PRESIDENT

Digitally signed by Kimberly
Lebak
Date: 2023.05.01 17:40:19
-06'00'

Date: May 1, 2023

APPROVAL OF STIPULATED FINAL ORDER

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

DocuSigned by:

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JAMES C. KENNEY
SECRETARY OF ENVIRONMENT

Date: May 31, 2023