

PERMIT PART 1 GENERAL PERMIT CONDITIONS

1.1 AUTHORITY

This Permit is issued pursuant to the authority of the New Mexico Environment Department (Department) under the New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 through 74-4-14, in accordance with the New Mexico Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC.

Pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992k, and 40 CFR Part 271 and Part 272 Subpart GG, the State of New Mexico, through the Department, is authorized to administer and enforce the state hazardous waste management program under the HWA in lieu of the federal program.

This Permit contains terms and conditions that the Department has determined are necessary to protect human health and the environment. (*See* 40 CFR § 270.32(b)(2)).

Any violation of a requirement in this Permit may subject the Permittees or their officers, employees, successors, and assigns to: 1) a compliance order under § 74-4-10 of the HWA or § 3008(a) of RCRA (42 U.S.C. § 6928(a)); 2) an injunction under § 74-4-10 of the HWA or § 3008(a) of RCRA (42 U.S.C. § 6928(a)), or § 7002(a) of RCRA (42 U.S.C. § 6972(a)); 3) civil penalties under §§ 74-4-10 and 74-4-10.1 of the HWA or §§ 3008(a) and (g) of RCRA (42 U.S.C. §§ 6928(a) and (g)), or § 7002(a) of RCRA (42 U.S.C. § 6972(a)); 4) criminal penalties under § 74-4-11 of the HWA or §§ 3008(d), (e), and (f) of RCRA (42 U.S.C. §§ 6928(d), (e), and (f)); or 5) some combination of the foregoing. The list of authorities in this paragraph is not exhaustive and the Department reserves the right to take any action authorized by law to enforce the requirements of this Permit.

1.2 PERMITTEES AND PERMITTED ACTIVITY

The Secretary of the New Mexico Environment Department issues this Permit for hazardous and mixed waste management at the Sandia National Laboratories (SNL) to the United States Department of Energy (DOE), the owner of SNL, and National Technology and Engineering Solutions of Sandia, LLC (NTESS), operator of SNL (EPA ID Number NM5890110518).

This Permit authorizes DOE and NTESS (the Permittees) to manage, store, and treat hazardous and mixed waste at SNL, and establishes the general and specific standards for these activities, pursuant to the HWA and the HWMR. This Permit also establishes standards for closure and post-closure care of permitted units at SNL, and corrective action pursuant to the HWA and HWMR.

1.2.1 Scope of Permit

This Permit authorizes the storage of hazardous and mixed wastes at the Hazardous Waste Handling Unit (HWHU), treatment of hazardous waste at the Thermal Treatment Unit (TTU), the treatment and storage of hazardous and mixed wastes at the Radioactive and Mixed Waste Management Unit (RMWMU) and the Auxiliary Hot Cell Unit (AHCU), and the storage of hazardous and mixed waste at the Manzano Storage Bunkers (MSB), as identified in Section 1.4 of this Permit Part. Storage or treatment of hazardous or mixed wastes that requires a permit is not authorized at any other location at the Facility. This Permit also requires the Permittees to

conduct post-closure care of the CAMU and corrective actions at solid waste management units and areas of concern facility-wide.

1.3 PERMIT CITATIONS

Whenever the Permit cites a provision of 20.4.1 NMAC or Title 40 Code of Federal Regulations (40 CFR) the Permit shall be deemed to incorporate the citation by reference, including all subordinate provisions of the cited provision, and make binding the full text of the cited provision.

Hazardous waste management regulations are frequently cited throughout this Permit. The federal hazardous waste management regulations, 40 CFR Parts 260 through 273, are generally cited rather than the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC. The federal regulations are cited because only the federal regulations set forth the detailed regulatory requirements; the State regulations incorporate by reference, with certain exceptions, the federal regulations in their entirety. Citing only the federal regulations also serves to avoid encumbering each citation with references to two sets of regulations. However, it is the State regulations that are legally applicable and enforceable. Therefore, for the purpose of this Permit, and enforcement of its terms and conditions, all references to provisions of federal regulations that have been incorporated into the State regulations shall be deemed to include the State incorporation of those provisions.

1.4 EFFECT OF PERMIT

As to those activities specifically authorized or otherwise specifically addressed under this Permit, compliance with this Permit during its term shall constitute compliance, for purposes of enforcement, with Subtitle C of RCRA and the HWA, and the implementing regulations at 40 CFR Parts 264, 266, and 268 to the extent, and with the exceptions, provided by 40 CFR § 270.4.

Compliance with this Permit shall not constitute a defense to any order issued or any action brought under: §§ 74-4-10, 74-4-10.1, or 74-4-13 of the HWA; §§ 3008(a), 3008(h), 3013, 7002(a)(1)(B), or 7003 of RCRA; §§ 104, 106(a), or 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 to 9675; or any other federal, state or local law providing for protection of public health or the environment.

This Permit does not convey any property rights of any sort or any exclusive privilege, nor authorize any injury to persons or property, any invasion of other private rights, or any infringement of state or local laws or regulations. Compliance with this Permit does not relieve Permittees from the responsibility of complying with all applicable state or federal laws and regulations. (*See* 40 CFR §§ 270.4, 270.30(g)).

1.5 SEVERABILITY

The provisions of the Permit are severable, and if any provision of this Permit, or any application of any provision of this Permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this Permit shall not be affected thereby.

1.6 DEFINITIONS

Terms used in this Permit shall have the same meanings as those in the HWA, RCRA, and their implementing regulations unless this Permit specifically provides otherwise. Where a term is not defined in the HWA, RCRA, implementing regulations, or this Permit, the meaning of the term shall be determined by a standard dictionary reference, EPA guidelines or publications, or the generally accepted scientific or industrial meaning of the term.

“Area of Concern” (AOC) means any area that may have had a release of a hazardous waste or hazardous constituents, which is not a solid waste management unit.

“Consent Order” means the April 29, 2004 Compliance Order on Consent issued to the Permittees pursuant to the HWA and the New Mexico Solid Waste Act (SWA), NMSA 1978, § 74-9-36(D), and any subsequent modifications thereof.

“Corrective Action” means all corrective action necessary to protect human health and the environment for all releases of hazardous or mixed waste or hazardous constituents from any Solid Waste Management Unit (SWMU) or Area of Concern (AOC) at the Facility, regardless of the time at which waste was placed in the Unit, as required under HWA § 74-4-4.2(B) and 40 CFR § 264.101. Corrective Action may address releases to air, soil, sediment, surface water or groundwater.

“Corrective Action Complete” means the requirements for corrective action have been satisfied by the Permittees as determined by the Department.

“Days” refers to calendar days unless specified otherwise in this Permit.

“Department” means the New Mexico Environment Department and any successor or predecessor agencies.

“DOE” means the United States Department of Energy, and any successor departments or predecessor agencies.

“EPA” means the United States Environmental Protection Agency and any successor or predecessor agency.

“Facility” means the Sandia National Laboratories including all contiguous land, and structures, other appurtenances, and improvements on the land. The Facility includes five Technical Areas (TAs) located within Kirtland Air Force Base (KAFB) and several remote test areas located on KAFB and the adjacent lands withdrawn from the U.S. Forest Service: Foothills Test Area, Central Coyote Test Area, Southwest Test Area, and Canyons Test Area. Within KAFB and the adjacent lands withdrawn from the U.S. Forest Service, the Facility comprises approximately 15,054 acres (23.5 square miles).

For the purpose of implementing corrective action under 40 CFR § 264.101, RCRA Section 3008(h), or the HWA, NMSA 1978, § 74-4-10(E), the Facility includes all contiguous property under the control of the owner or operator seeking a permit under the HWA. The Facility also includes all the SWMUs and AOCs listed in Attachment K of this Permit. The regional location of the Facility is shown in Figure 1 of Permit Attachment L (Figures).

“Federal Facility Compliance Order” (FFCO) means the Order issued by the Department to the United States Department of Energy, and Sandia Corporation (which is now doing business as NTESS, LLC) on October 4, 1995 pursuant to section 3012(b) of RCRA, 42 U.S.C. § 6939(c), as

amended by the Federal Facility Compliance Act (the Act) of 1992, Public Law 102 386, 106 Stat. 1505 (1992), and any subsequent modifications thereof.

“Foreign Source” means a hazardous waste source outside the United States.

“Groundwater” means water below the land surface in a zone of saturation.

“Hazardous Constituent” or “Hazardous Waste Constituent” means 1) any constituent identified in 40 CFR Part 261 Appendix VII; 2) any constituent identified in 40 CFR Part 261, Appendix VIII, or 3) any constituent listed in Table 1 of 40 CFR § 261.24. For purposes of corrective action, “hazardous constituent” and “hazardous waste constituent” also means any constituent identified in 40 CFR Part 264 Appendix IX.

“Hazardous Waste” means any solid waste, or combination of solid wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics meets the description set forth in NMSA § 74-4-3(K), or is listed as a hazardous waste or exhibits a hazardous waste characteristic under 40 CFR Part 261.

“Hazardous Waste Management Regulations” means the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC.

“Hazardous Waste Management Unit” means a contiguous area of land on or in which hazardous waste is placed, or the largest area in which there is significant likelihood of mixing hazardous waste constituents in the same area. Examples of Hazardous Waste Management Units include a surface impoundment, a waste pile, a land treatment area, a landfill cell, an incinerator, a tank and its associated piping and underlying containment system and a container storage area. A container alone does not constitute a unit; the unit includes containers and the land or pad upon which they are placed.

"Interim Measures" means actions necessary to minimize or prevent the further migration of hazardous constituents and limit actual or potential human and environmental exposure to hazardous constituents while long-term corrective action remedies are evaluated and, if necessary, implemented.

“Mixed Waste” means waste that contains both hazardous waste subject to the HWA and RCRA, and radioactive materials, including source, special nuclear or byproduct material, subject to the Atomic Energy Act of 1954, as amended. (42 U.S.C. § 2011 et seq.).

“National Technology and Engineering Solutions of Sandia, LLC (NTESS),” formerly known as Sandia Corporation, means a limited liability company organized under the laws of the State of Delaware, doing business in the State of New Mexico as a wholly owned subsidiary of Honeywell International, and the management and operating contractor at Sandia National Laboratories (SNL); Sandia Corporation is identified on the Part A application submitted pursuant to 40 CFR § 270.13.

“Off-Site Source” means a generator of hazardous or mixed waste or a treatment, storage, or disposal facility (TSDF) managing hazardous or mixed waste located within the United States of America, but outside the Permittees’ Facility boundary.

“Permit” means this Permit, EPA ID No. NM5890110518, issued to the Permittees for the Facility pursuant to the HWA and the HWMR, to operate hazardous and mixed waste treatment and storage units and to conduct post-closure care and corrective action, as it may be modified or amended. This Permit consists of Permit Parts 1 through 8 and Attachments A through M.

“Permitted Unit” means a Hazardous Waste Management Unit authorized for operations or for which post-closure care is required by this Permit. The Permitted Units authorized by this Permit are listed in Attachment J (Hazardous and Mixed Waste Management Units), Table J-1.1 (Units Permitted for Storage in Containers (Process Code SO1)), Table J-1.2 (Units Permitted for Treatment (Process Codes TO4 and X01) and Table J-2 (Permitted Units Undergoing Post-Closure Care (Process Code S99)). The locations of the Permitted Units are shown in Figure 2, Permit Attachment L (Figures).

“Permittees” mean NTESS and the United States Department of Energy (DOE). Permittees are jointly and severally subject to the conditions of this Permit.

“RCRA” means the Resource Conservation and Recovery Act of 1980 as amended (42 U.S.C. §§ 6901 to 6992K) by the Hazardous and Solid Waste Amendments (HSWA) in 1984.

"Release" means any spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of any hazardous or mixed waste or hazardous constituents into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous waste or hazardous constituents).

"Remediation Waste" means all solid, hazardous, and mixed wastes; and all media (including groundwater, surface water, soils, and sediments) and debris; that are managed for implementing cleanup.

“Solid Waste Management Unit” (SWMU) means any discernible unit at which solid waste has been placed at any time, and from which the Department determines there may be a risk of a release of hazardous waste or hazardous constituents, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at the Facility at which solid wastes have been routinely and systematically released; they do not include one-time spills. (*See* 61 Fed. Reg. 19431, 19442-43 (May 1, 1996)).

“Technical Area” (TA) means a specific parcel of land controlled by the Permittees and owned by the U.S. Department of Energy.

1.7 EFFECT OF INACCURACIES IN PERMIT APPLICATION

This Permit is based on information submitted in the Permittees’ Part A and Part B of the Permit Applications dated February 2002, and subsequent revisions and supplemental information, herein referred to as the Application.

Any inaccuracies found in the Application may be grounds for the termination, revocation and re-issuance, or modification of the Permit in accordance with 40 CFR §§ 270.41 through 270.43, which are incorporated herein by reference, and for enforcement action.

1.8 PERMIT ACTIONS

1.8.1 Duration of Permit

This Permit shall be effective for a fixed term of ten years from its effective date, except as provided in Permit Section 1.8.3 (40 CFR § 270.50(a)). The effective date of this Permit shall be 30 days after notice of the Department’s decision has been served on the Permittees or such later time as the Department may specify.

1.8.2 Permit Modification

This Permit may be modified for both routine and significant changes as specified in 40 CFR §§ 270.41 through 270.43, and any modification shall conform to the requirements specified in these regulations. The filing of a permit modification request by the Permittees, or the notification by the Permittees of planned changes or anticipated noncompliance, does not stay the applicability or enforceability of any permit condition. (40 CFR § 270.30(f)).

1.8.3 Permit Suspension, Termination, and Revocation and Re-Issuance

This Permit may be suspended, terminated, or revoked and re-issued for cause as specified in § 74-4-4.2 of the HWA and 40 CFR §§ 270.41 and 270.43.

1.8.4 Permit Re-Application

If the Permittees intend to continue an activity regulated by this Permit after the expiration date of this Permit, the Permittees shall submit a complete application for a new permit at least 180 days before the expiration date of this Permit unless permission for a later date has been granted by the Department in compliance with 40 CFR §§ 270.10(h) and 270.30(b). The Department may not allow the Permittees to submit applications later than the expiration date of this Permit. (40 CFR § 270.10(h)).

Regardless of whether the Permittees intend to continue any other activity regulated by this permit, the Permittees shall submit at a minimum a complete application for a new permit for post-closure care of the CAMU at least 180 days before the expiration date of this Permit, unless permission for a later date has been granted by the Department or post-closure care has been terminated prior to the expiration date of this Permit in accordance with the requirements set forth in Permit Section 7.1. The application for the CAMU post-closure care permit may be included in an application for other regulated activities.

1.8.5 Continuation of Expiring Permit

If the Permittees have submitted a timely and complete application for renewal of this Permit, in compliance with 40 CFR §§ 270.10 and 270.13 through 270.28 and Permit Section 1.8.4, this Permit shall remain in effect until the effective date of the new permit if, through no fault of the Permittees, the Department has not issued a new permit on or before the expiration date of this Permit. (40 CFR § 270.51).

1.9 DUTIES AND REQUIREMENTS

1.9.1 Duty to Comply

The Permittees shall comply with all conditions in this Permit, except to the extent and for the duration such noncompliance is authorized in a temporary emergency permit pursuant to 40 CFR § 270.61. Any Permit noncompliance, except under the terms of an emergency permit, constitutes a violation of the HWA and RCRA and is grounds for enforcement or other Department action and may subject the Permittees to an administrative or civil enforcement action, including civil penalties and injunctive relief, as provided in Permit Section 1.1, or permit modification,

suspension, termination, or revocation, or denial of a permit application or modification request under § 74-4-4.2 of the HWA and 40 CFR §§ 270.41 and 270.43.

1.9.2 Transfer of Permit

The Permittees shall not transfer this Permit to any person except after prior written approval of the Department. The Department will require modification or revocation and re-issuance of the Permit, as specified in 40 CFR §§ 270.40(b) and 270.41(b)(2), to identify the new Permittee and incorporate other applicable requirements under the HWA, RCRA, and their implementing regulations. The prospective new Permittee shall file a disclosure statement with the Department, if applicable and as specified at § 74-4-4.7 of the HWA, prior to modification or revocation and re-issuance of the Permit.

Before transferring ownership or operation of the Facility, the Permittees shall notify the new owner and operator in writing of all applicable requirements of this Permit and 40 CFR Parts 264 and 270. (40 CFR §§ 264.12(c) and 270.30(l)(3)).

1.9.3 Need to Halt or Reduce Activity Not a Defense

The Permittees shall not use as a defense in an enforcement action that it would have been necessary to halt or reduce permitted activities in order to maintain compliance with the conditions of this Permit. (40 CFR § 270.30(c)).

1.9.4 Duty to Mitigate

In the event of noncompliance with this Permit, the Permittees shall take all reasonable steps to minimize releases of hazardous wastes and hazardous constituents to the environment and shall carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment. (40 CFR § 270.30(d)).

1.9.5 Proper Operation and Maintenance

The Permittees shall at all times properly operate and maintain all facilities and systems of treatment and control and related appurtenances which are installed or used by the Permittees to achieve compliance with the conditions of this Permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance and quality control (QA/QC) procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with this Permit. (40 CFR § 270.30(e)).

1.9.6 Duty to Provide Information

The Permittees shall furnish to the Department, within a reasonable time as specified by the Department, any relevant information which the Department may request to determine whether cause exists for modifying, suspending, terminating, or revoking and reissuing this Permit or to determine compliance with this Permit.

The Permittees shall also furnish to the Department, upon request, copies of records that are required to be kept by this Permit. Information and records requested by the Department pursuant to this condition shall be provided in hard copy paper form or in an electronic format useable by the Department. (40 CFR §§ 264.74(a) and 270.30(h)).

This Permit condition shall not be construed to limit in any manner the Department's authority under § 74-4-4.3 of the HWA, § 3007(a) of RCRA, or other applicable law.

1.9.7 Inspection and Entry

The Permittees shall allow authorized representatives of the Department, upon the presentation of credentials and at reasonable times, and under the conditions of this Permit, to:

1. Enter upon the Permittees' premises where the Permitted Unit or activity is located or conducted or where records must be kept;
2. Have access to and photograph any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required;
3. Inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required;
4. Have access to, and copy, any records that must be kept; and
5. Sample or monitor, for the purposes of ensuring Permit compliance or as otherwise authorized by the HWA or RCRA, any substances or parameters at any location.

(40 CFR § 270.30(i)).

The Permittees shall provide full access, for the purposes above, to authorized representatives of the Department, limited only by any access restrictions established to protect human health or the environment. To the extent that any such access restrictions exist, the Permittees shall provide a means for authorized representatives of the Department to accomplish these purposes through the use of remote-operated technology or by other safe methods.

1.9.8 Representative Sampling

All samples and measurements taken by the Permittees under this Permit shall be representative of the medium, waste, or other material being sampled. (See 40 CFR § 270.30(j)(1)).

1.9.9 Duty to Report

1.9.9.1 Reporting Planned Changes

The Permittees shall give advance written notice to the Department as soon as possible, of any planned physical alterations or additions to any Permitted Unit at the Facility. (40 CFR § 270.30(l)(1)).

1.9.9.2 Reporting Anticipated Noncompliance

The Permittees shall give advance written notice to the Department of any planned changes to any permitted unit at the Facility or activity which may result in noncompliance with Permit

requirements. For a new facility, the Permittees may not treat, store, or dispose of hazardous waste; and for a facility being modified, the Permittees may not treat, store, or dispose of hazardous waste in the modified portion of the facility except as provided in § 270.42 until the provision of § 270.30(1)(2)(i) and (ii) are satisfied. (*See* 40 CFR § 270.30(1)(2)).

1.9.9.3 24 Hour and Subsequent Reporting

The Permittees shall report to the Department, both orally and in writing, any noncompliance that may endanger human health or the environment. (*See* 40 CFR § 270.30(1)(6)). This report shall be submitted in accordance with Permit Sections 1.9.9.4 and 1.9.9.5

1.9.9.4 24 Hour Oral Report

The Permittees shall make an initial oral report within 24 hours after the time the Permittees become aware of the circumstances of the noncompliance. The oral report shall include, at a minimum, the following information:

1. A description of the occurrence and its cause including:
 - a. a). name, address, and telephone number of the owner or operator, and name and telephone number of person making the report;
 - b. b). name, address, and telephone number of the Facility;
 - c. c). date, time, and type of incident;
 - d. d). name and quantity of materials involved;
 - e. e). the extent of injuries, if any;
 - f. f). an assessment of actual or potential hazards to the environment and human health outside the Facility, where this is applicable; and
 - g. g). the estimated quantity and disposition of recovered material that resulted from the incident. (40 CFR § 270.30(1)(6)(ii)).
2. Information concerning the release of any hazardous waste which may endanger public drinking water supplies;
3. Any information of a fire or explosion at a permitted unit which may threaten the environment or human health; and
4. Any information of a release or discharge of hazardous waste which may threaten the environment or human health outside the permitted unit. (40 CFR §§ 270.30(1)(6)(i)(A) and (B)).

The oral report shall be made by calling the Hazardous Waste Bureau's main telephone number (505) 476-6000 during regular business hours, or by calling the New Mexico Department of Public Safety dispatch telephone number (505) 827-9329 during non-business hours, and requesting that the report be forwarded to the Department spill number.

1.9.9.5 Five Day Written Report

The Permittees shall submit a written report in hard copy or via e-mail within five days after the time the Permittees become aware of the noncompliance under Permit Section 1.9.9.3. Any such report transmitted by e-mail is not subject to the certification and signatory requirements under Permit Section 1.12. However, if such a report is provided to the Department by e-mail, the Permittees must also submit to the Department the same written report or an updated report within 15 days after the Permittees become aware of the noncompliance. The written report must meet the certification and signatory requirements of Permit Section 1.12. The Permittees must include in the written report the information required in Permit Section 1.9.9.4 (items 1-3) and the following information:

1. The period of the noncompliance including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
2. Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance. (See 40 CFR §§ 270.30(1)(6)(iii) and 270.32(b)(2)).

The Department may extend the time for submitting the written report up to fifteen (15) calendar days. (40 CFR § 270.30(1)(6)(iii)).

1.9.9.6 Reports Required by the Contingency Plan

If any emergency requires implementation of the Contingency Plan provided in Permit Attachment D, the Permittees shall comply with the reporting requirements required by 40 CFR § 264.56(i), Permit Section 2.13.5.3, and the Contingency Plan.

1.9.9.7 Reports of Other Noncompliance

The Permittees shall report, at the time monitoring reports are submitted, all other instances of noncompliance not reported under Section 1.9.9 of this Permit. These reports shall contain the information required by Permit Section 1.9.9.5. (See 40 CFR § 270.30(1)(10)).

1.9.9.8 Manifest Discrepancy Report

If a significant discrepancy in a manifest is discovered, the Permittees shall attempt to reconcile the discrepancy. If not resolved within 15 calendar days, the Permittees shall submit a letter report, including a copy of the manifest to the Department. (See 40 CFR § 264.72 and 40 CFR § 270.30(1)(7)).

1.9.9.9 Unmanifested Waste Report

If the facility accepts for treatment, or storage unmanifested hazardous or mixed waste from an off-site source, the Permittees shall meet the reporting requirements of 40 CFR § 264.76. (See 40 CFR § 270.30(1)(8)).

1.9.9.10 Biennial Report

A biennial report must be submitted by March 1 of each even numbered calendar year. The report must cover facility activities during the previous calendar year in accordance with the requirements of 40 CFR § 264.75. (*See* 40 CFR § 270.30(1)(9)).

1.10 ADMISSIBILITY OF DATA

In any administrative or judicial action to enforce a condition of this Permit, the Permittees waive any objection to the admissibility as evidence of any data generated pursuant to this Permit.

1.11 OTHER INFORMATION

Whenever the Permittees become aware that they failed to submit any relevant facts in the Permit Application, or submitted incorrect information in the Permit Application, or in any report to the Department, the Permittees shall promptly submit such facts or correct information in writing to the Department. (40 CFR § 270.30(1)(11)).

1.12 SIGNATORY REQUIREMENT

The Permittees shall sign and certify all applications, reports, or information submitted to or requested by the Department or required by this Permit, in accordance with the requirements in 40 CFR §§ 270.11 and 270.30(k). The Permittees shall provide written notification to the Department within thirty days of any changes concerning the names of and contact information for the responsible corporate and principal executive officers or their duly authorized representatives.

1.13 COMPLIANCE SCHEDULES

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this Permit shall be submitted no later than 14 calendar days following each scheduled date. (40 CFR § 270.30(1)(5)).

1.14 SUBMITTAL OF REPORTS, NOTIFICATIONS, AND INFORMATION TO THE DEPARTMENT

1.14.1 Information Submittal

Unless otherwise provided in this Permit, the Permittees shall submit by certified mail, courier/delivery service, or hand delivery all reports, notifications, or other submissions that are required by this Permit to be sent or given to the Department.

A summary of the reporting requirements pursuant to this Permit is found in Attachment I (Compliance Schedule). This Attachment is not exhaustive and the absence of a reporting requirement in the Attachment shall not be interpreted to waive an otherwise applicable requirement.

The original plans, reports, notifications or other submissions shall be submitted to the Department by certified mail, courier/delivery service or hand delivery to:

Chief
New Mexico Environment Department
Hazardous Waste Bureau
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505-6303
Telephone Number: (505) 476-6000
Facsimile Number: (505) 476-6030

And one copy to:

New Mexico Environment Department
Hazardous Waste Bureau
121 Tijeras Avenue NE
Albuquerque NM 87102
Telephone Number: (505) 222-9500
Facsimile Number: (505) 222-9510

1.14.2 Approval of Submittals

All documents that the Permittees prepare under the terms of this Permit and submit to the Department that are subject to the provisions of 20.4.2 NMAC shall be subject to the procedures set forth therein. Documents requiring Department approval that are not subject to the provisions of 20.4.2 NMAC may be reviewed and approved, approved with modifications or directions, disapproved, denied, or rejected by the Department.

Upon the Department's written approval, all submittals and associated schedules shall become enforceable as part of this Permit in accordance with the terms of the Department's written approval, and such documents, as approved, shall control over any contrary or conflicting requirements of this Permit. This provision does not affect any public process that is otherwise required by this Permit, the HWA, or its implementing regulations.

1.14.3 Extension of Time

The Permittees may seek an extension of time in which to perform a requirement of this Permit, for good cause, by sending a written request for extension of time and proposed revised schedule to the Department. The request shall state the length of the requested extension and describe the basis for the request. The Department will respond in writing to any request for extension following receipt of the request. If the Department denies the request for extension, it will state the reasons for the denial.

1.15 CONFIDENTIAL INFORMATION

The Permittees may claim confidentiality for any information required to be submitted by this Permit. Any such claim must be asserted at the time of submittal in the manner prescribed on the application form, or in the case of other submittal, by stamping the words "confidential business information" on each page containing such information. If no claim is made, the Department may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in 40 CFR Part 2 (Public

Information). (Section 74-4-4.3(D) and (F) of the HWA and 40 CFR § 260.2 and 40 CFR § 270.12).

1.16 RESERVED

1.17 INFORMATION REPOSITORY

The Permittees shall establish and maintain a physical Information Repository (IR) in accordance with the requirements of 40 CFR §§124.33(c) through (f), which are incorporated herein by reference. The Permittees shall propose for the Department's approval a location for the IR within 30 days after the effective date of this Permit. The documents contained in the IR shall be accessible to the public during normal business hours. (See 40 CFR §§124.33 and 270.30(m))

The Permittees shall ensure that the IR contains the following documents:

1. The Permittees' Part A and Part B Permit Applications associated with the permit renewal;
2. Permit modification requests associated with this Permit submitted pursuant to 40 CFR §270.42; and associated Department responses;
3. The Waste Minimization Report submitted pursuant to Permit Section 2.5;
4. Requests for extensions of time submitted pursuant to Permit Section 1.14.3;
5. Corrective action documents submitted pursuant to Permit Part 8; and
6. Each report submitted pursuant to Section 1.9.9 of this Permit if such report is required to be submitted in writing.

The Permittees shall establish the IR within 180 days of the effective date of this Permit or within 90 days of the Department's approval of the location, whichever is later.

1.17.1 Index of Information Repository

The Permittees shall ensure that the IR includes an index of the documents contained in the IR. This index shall be accessible on the internet through a link on the Permittees' web page. An online index that includes IR documents shall be acceptable if the IR is located in a publicly accessible library.

The Permittees shall add new documents to the IR within 30 days after the new documents are submitted to the Department.

The Permittees shall inform the public of the existence of the IR and the locations where it may be viewed by the following methods:

1. Written notice to all individuals on the facility mailing list 30 days after the IR becomes operational;
2. Public notice in area newspapers, including the Albuquerque Journal when the IR becomes operational;
3. Continuous notice on the Permittees' web page of the existence of the IR; and
4. In the public notice for any of the Permittees' initiated or requested permit modifications when such notices are required.

1.17.2 Notification of Repository Updates

1.17.2.1 Interested Persons List

The Permittees shall maintain a list of persons who have requested notification by e-mail of updates to the IR. The Permittees shall provide a link on the Permittees' web page whereby members of the public may submit a request to be placed on the e-mail notification list. In the event that the web page stops operation, the Permittees shall use their best efforts to fully restore the page and its operation as soon as possible.

E-mail Notification

Within 30 days of submission to the Department of any document required to be included in the IR under Section 1.17 of this permit, the Permittees shall send an email notification to the list maintained under section 1.17.2.1 of this Permit.

1.18 COMMUNITY RELATIONS PLAN

The Permittees shall establish and implement a Community Relations Plan (CRP) to describe how the Permittees will keep communities and interested members of the public informed of Permit-related activities, including waste management, closure, post-closure, and corrective action. (*See* 40 CFR § 270.32(b)(2)).

The CRP must describe how the Permittees will:

1. Establish an open working relationship with communities and interested members of the public;
2. Keep communities, the Pueblo of Isleta, and interested members of the public informed of permit actions of interest (e.g., clean-up activities, implementation of the Contingency Plan, Permit modification requests);
3. Attempt to minimize disputes and resolve differences with communities, the Pueblo of Isleta and interested members of the public;
4. Provide a mechanism for the timely dissemination of information in response to individual requests; and
5. Provide a mechanism for communities, the Pueblo of Isleta, and interested members of the public to provide feedback and input to the Permittees semi-annually.

Within 180 days after the effective date of this Permit, the Permittees shall submit the CRP to the Department for approval. The Permittees shall implement and post the CRP on the Permittees' web site within 180 days of approval by the Department. The Permittees shall maintain the CRP until the termination of this Permit.

The Permittees shall review the CRP at least annually and, if necessary, submit to the Department for approval an updated plan.

1.19 DISPUTE RESOLUTION

In the event the Permittees disagree, in whole or in part, with an approval, approval with modifications or directions, disapproval, denial, or rejection by the Department of any submittal

subject to the provisions of Permit Section 1.14.2, the Permittees may seek dispute resolution. The Permittees may pursue any available legal remedy to resolve the dispute only after dispute resolution is exhausted.

1.19.1 Notice to the Department

To invoke dispute resolution, the Permittees shall notify the Department in writing within 30 days of receipt of the Department's action subject to the dispute. Such notice shall set forth the specific matters in dispute, the position the Permittees assert should be adopted, the basis for the Permittees' position, and any matters considered necessary for the Secretary's determination.

1.19.2 Agreement or Disagreement between the Parties

The Department and the Permittees shall have thirty (30) calendar days from the Department's receipt of notification provided under the above Permit Section to meet or confer to resolve any disagreement. In the event an agreement is reached, the Permittees shall comply with the terms of such agreement or, if appropriate, submit a revised submittal and implement the same in accordance with, and within the time frame specified in, such agreement.

1.19.3 Final Decision of the Secretary of the Department

If agreement is not reached within the thirty (30) calendar-day period, the Department Secretary will notify the Permittees in writing of his/her decision on the dispute, and the Permittees shall comply with the terms and conditions of the decision. Such decision shall be the final resolution of the dispute and shall be incorporated as an enforceable part of this Permit. The Permittees shall implement the decision in accordance with, and within the time frame specified in, such decision.

1.19.4 Actions Not Affected By Dispute

With the exception of those conditions under dispute, the Permittees shall proceed to take any action required by those portions of the submission and of this Permit that the Department determines are not affected by the dispute. The Department will specify in writing which portions of the submission are not affected by the dispute.

1.20 REAL PROPERTY CONVEYANCE AND TRANSFER

The provisions of this Permit Section (1.20) shall apply to the conveyance of fee from the United States to another entity (subsection 1.20.1), and shall apply to the transfer of real property to another federal entity (subsection 1.20.2), if such real property is subject to any requirement under this Permit. The requirements of this Permit Section do not apply to Facility real property that is subject to requirements of Section III.Y of the Consent Order except as may be necessary for fully completing notice requirements.

1.20.1 Conveyance of Facility Property in Fee

DOE shall not convey any real property to a non-federal entity without submitting a notice to the Department, if such real property is subject to any requirement under this Permit. DOE shall submit the notice at least 120 days prior to the proposed effective date of conveyance.

The notice of real property conveyance shall:

1. Identify the boundaries of the land proposed for conveyance by providing the Department with a boundary survey certified by a registered professional surveyor;
2. Provide the new owner's name, address, telephone number, and status as a state, private, public, or other (non-federal) entity;
3. Describe the location and identity of any unit subject to this permit including existing solid waste management units and areas of concern and permitted units, on the land proposed for conveyance;
4. Describe any known or suspected presence of hazardous waste or hazardous constituents in soil, sediment, surface water, or groundwater at any depth within the boundaries of the land proposed for conveyance;
5. Describe the status of any past, present, or planned investigations or remediation of contamination of soil, sediment, surface water, or groundwater at any depth within the boundaries of the land proposed for conveyance;
6. Comply with the requirements of § 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9620(h); and
7. State any applicable restriction (e.g., "the property shall not be used for any purpose other than [define the use scenario on which the Permittees have based their cleanup of the property]. That means that the property shall not be used for [define less restrictive uses]").

1.20.1.1 Determination of Need for Further Action

The Department will determine whether closure, post-closure, and any corrective actions implemented by the Permittees with regard to the property are protective of human health and the environment in light of the new owner's intended use of the property. If the Department determines that the closure, post-closure care activities, or the corrective actions are not sufficiently protective in light of the new owner's intended use, the Department will notify the Permittees whether additional actions are necessary. The DOE must ensure the new owner is made aware of any remaining obligations associated with the property. Upon receipt of a determination that no (future) closure, post-closure and corrective action activities are necessary, the Permittees shall submit a permit modification request to reflect the Facility's new property boundary.

1.20.1.2 Restricted Use

When DOE conveys to a non-federal entity real property that has been remediated to a level less protective than that deemed by the Department appropriate for residential use, DOE shall include in the deed a restriction that limits future use of the property to the particular use scenario on which the Permittees have based their cleanup of the property (e.g., if the property was cleaned based on an industrial use scenario, future use of the property would be limited to industrial use). The language of the deed restriction governing future land use necessarily will differ for each deed, depending upon the facts and circumstances of the property being transferred. Such restriction shall, at a minimum, be consistent with the following language:

The property shall not be used for any purpose other than [define the use scenario on which the Permittees have based their cleanup of the property]. That means that the property shall not be used for [define less restrictive uses].

At least 60 days prior to transfer, DOE shall provide the Department the opportunity to review and comment upon the language of the proposed deed restriction limiting future land use. The Department may provide comments on such proposed language.

1.20.1.3 Enforceability against Subsequent Owners

The covenant required by CERCLA § 120(h)(3)(A)(ii), and the deed restriction described above in this Section (to the extent the property is not remediated for unrestricted use), are requirements within the meaning of CERCLA § 310(a)(1), 42 U.S.C. § 9659(a)(1). The contract of sale will state that the parties to the contract agree that the deed restriction to be set forth in the deed is a requirement within the meaning of CERCLA § 310(a)(1), 42 U.S.C. § 9659(a)(1). DOE shall ensure such statement within the Contract of Sale will survive the conveyance of the real property. The deed conveying title from DOE to the new owner shall state that the restriction on land use set forth in the deed is intended to be an equitable servitude running with the land, that both the Department and the DOE are beneficiaries and that such restriction is enforceable by the Department and the DOE against any subsequent owner that fails to comply with its terms. The deed shall be recorded in the appropriate recording office in the chain of title of the property to give record notice of the use restriction to subsequent owners of the property.

1.20.1.4 EPA Institutional Controls Tracking System

For any deed conveying title from DOE that contains a restriction on future land use, the Permittees shall, within 90 days of the conveyance, notify EPA Region 6 of the conveyance and identify for EPA the location of the property that is the subject of the conveyance.

1.20.2 Transfer of Facility Property to another Federal Agency

If any portion of the Facility subject to the requirements of this Permit will be transferred from DOE to another entity, department, or instrumentality of the United States, the Permittees shall provide written notice of such transfer to the Department at least 120 days prior to the transfer. If, however, the Permittees learn of such decision fewer than 120 days prior to the transfer, the Permittees shall provide written notice to the Department as soon thereafter as is reasonably practicable.

The notice of operational transfer shall:

1. Identify the boundaries of the land proposed for transfer by providing the Department with a boundary survey certified by a registered professional surveyor;
2. Provide the new federal entity's name, address, telephone number;
3. Describe the location and identity of any unit subject to this permit including existing solid waste management units and areas of concern and permitted units, on the land proposed for transfer;
4. Describe any known or suspected presence of hazardous waste or hazardous constituents in soil, sediment, surface water, or groundwater at any depth within the boundaries of the land proposed for transfer; and
5. Describe the status of any past, present, or planned investigations or remediation of contamination of soil, sediment, surface water, or groundwater at any depth within the boundaries of the land proposed for transfer;

1.20.2.1 Notice and Meeting

Appropriate representatives of DOE will meet with representatives of the Department and the transferee federal entity. Such meeting shall take place within 30 days after DOE's written notice under this Permit Section (1.20.2.1). The meeting may occur following the transfer, if the United States determines that the transfer cannot be delayed. At the meeting, the parties will discuss the transferee entity's intended use of the property. The Department and DOE will review the closure, post-closure, and any corrective actions taken with regard to the property, in light of the transferee entity's intended use of the property.

1.20.2.2 Department's Determination

Within 60 days after the meeting required under Section 1.20.2.1, the Department will determine whether the closure, post-closure, and any corrective actions implemented by the Permittees with respect to the transferred property are protective of human health and the environment in light of the transferee entity's intended use of the property. If the Department determines that they are not, the Department must explain its determination in writing and identify the specific additional actions or requirements that the Permittees must complete with regard to the property. To the extent practicable, the Permittees will complete any additional actions or requirements identified by the Department prior to the transfer of operational control. DOE may, however, conduct such additional actions or requirements following transfer of operational control, pursuant to a schedule approved by the Department. Such schedule shall be enforceable pursuant to the terms of this Permit.

If the Department does not notify the Permittees within 60 days following the meeting required under Section 1.20.2.1 that additional actions or requirements are necessary with respect to the transferred property, the Permittees will not be required to take additional actions under this Permit.

1.20.2.3 Contrary Land Use

If the Department determines that the transferee entity plans to use, or is using, the subject property in a manner contrary to the use(s) discussed at the meeting described under Section 1.20.2.1, the Department shall notify DOE and the transferee entity in writing. In such writing, the Department shall explain its concerns with regard to the proposed or current use of the property. Within 30 days thereafter DOE, the Department, and the transferee entity shall meet to discuss the Department's stated concerns. The Department reserves its right to take any action, including administrative or judicial action, to address the contrary land use