

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT	)	
DEPARTMENT,	)	
Complainant,	)	ADMINISTRATIVE ORDER
	)	NO. HWB-25-_____
v.	)	
	)	
UNITED STATES, DEPARTMENT OF	)	
ENERGY,	)	
)	)	
Respondent.	)	
_____	)	

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Hazardous Waste Act (HWA), 1978 NMSA § 74-4-1 et seq., and the federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 et seq., as amended by the Federal Facility Compliance Act of 1992 (FFCA), 42 U.S.C. § 6939c, the New Mexico Environment Department (“NMED”, “Department”, or “Complainant”) issues this Administrative Compliance Order (“Order”) to the United States Department of Energy (“DOE” or “Respondent”). This Order requires the Respondent, to comply with the HWA and the Federal Facilities Compliance Order (“FFCO”), and assesses civil penalties for violations of the HWA and FFCO, as set forth below.

I. PARTIES

A.Complainant

1. Complainant is a state executive agency pursuant to the Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -1517. Complainant is charged with the administration and

enforcement of the New Mexico Hazardous Waste Act (“HWA”) and the Hazardous Waste Management Regulations, 20.4.1-20.4.1.110507 NMAC, and has authority to bring this lawsuit. NMSA 1978, § 74-1-6(A); § 74-4-13(A).

B.Respondents

2. United States Department of Energy (DOE). DOE is an agency of the federal government and the owner/co-operator at Los Alamos National Laboratories (“LANL”) and the owner of Sandia National Laboratories/New Mexico (“SN/NM”). LANL is located principally in Los Alamos County, New Mexico, and encompasses approximately 43 square miles. SNL/NM is primarily located on Kirtland Air Force Base in Albuquerque, New Mexico, and encompasses approximately 14 square miles. Both LANL and SNL/NM are existing hazardous waste management facilities.

II.

LEGAL BACKGROUND

3. Congress enacted the Resource Conservation and Recovery Act in 1976 in response to “a rising tide of scrap, discarded, and waste materials” that had become a matter of national concern. 42 U.S.C. § 6901(a)(2), (4) (1984). In enacting RCRA, Congress declared it a national policy “that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.” 42 U.S.C. § 6902(b). 42 U.S.C. § 6921 et seq. governs the management of hazardous waste, including “mixed waste” (hazardous + radioactive components).

4. Section 3004(j) of RCRA (42 U.S.C. § 6924(j)) prohibits storage of restricted wastes without treatment.

5. Congress recognized that the “collection of and disposal of solid wastes should continue to be primarily the function of the State, regional, and local agencies.” 42 U.S.C. § 6901(a) (4). Thus, RCRA allows any state to administer and enforce a hazardous waste program subject to authorization from the EPA. 42 U.S.C. § 6926(b).

6. EPA authorized New Mexico’s state program pursuant to RCRA in 1985, 40 C.F.R. § 272.1601(a), and delegated to New Mexico “primary responsibility for enforcing its hazardous waste management program.” 40 C.F.R. § 272.1601(b). New Mexico’s HWA and regulations promulgated pursuant to it are incorporated by reference into RCRA. 40 C.F.R. § 272.1601(c)(1).

7. The purpose of New Mexico’s HWA is to “ensure the maintenance of the quality of the state’s environment; to confer optimum health, safety, comfort and economic and social well-being on its inhabitants; and to protect the proper utilization of its lands.” Section 74-4-2.

8. New Mexico’s Legislature has granted wide latitude to its environmental programs in order to ensure protection of its natural resources, including through a robust regulatory program, see, e.g., Hazardous Waste Management Regulations 20.4.1 through 20.4.1.110.5 NMAC, and the explicit authority to compel compliance therewith, Section 74-4-10. New Mexico’s Environmental Protection Regulations and the rulemaking procedures thereunder are to be “liberally construed to carry out their purpose.” 20.1.1.108 NMAC.

9.NMSA 1978 § 74-4-1 et seq. authorizes the Department to enforce hazardous waste laws, issue compliance orders, assess civil penalties and administrative compliance costs, and take any action necessary to prevent endangerment to the public or environment from hazardous waste releases. See also NMSA 1978, § 9-7A-1 et seq.

10.As a valid administrative order issued by NMED pursuant to obligations and authority under New Mexico's Hazardous waste laws, the Department has the authority to issue a compliance order to the Defendant's, like the FFCO, that are binding and enforceable under Section 3021(b) of RCRA (42 U.S.C. § 6939c).

11. Further about the enforceability of the FFCO against the Defendants following the passage of the Federal Facility Compliance Act (FFCA) of 1992 (Pub. L. No. 102-386), which provides that federal facilities are fully subject to state hazardous waste laws and enforcement by authorized states under RCRA.

12.Section XIV.A of the FFCO confirms DOE is expected to fully fund all obligations and commitments established by the FFCO.

13.Section XIV.A of the FFCO requires DOE to take all steps necessary and use its best effort to obtain funding in a timely manner, including submitting timely and sufficient budget requests necessary to fund all obligations and commitments under the FFCO.

14.Section XXII of the FFCO authorizes the Department to impose civil penalties for violations of any enforceable FFCO provisions, including failures to ensure adequate funding for program activities.

15. Department has strong legal authority to pursue enforcement against DOE and LANL for failure to fund and meet compliance obligations under the FFCO and STP. Federal law explicitly permits such enforcement, even where funding is unavailable.

III. FACTUAL BACKGROUND

16. On October 4, 1995, the New Mexico Environment Department issued the FFCO requiring DOE and its contractor, the University of California, to comply with a detailed STP addressing mixed waste storage and treatment violations under RCRA and the New Mexico HWA.

17. The FFCO mandates strict adherence to compliance schedules and prohibits nonperformance based on funding shortfalls.

18. Section XIV of the FFCO requires funding be in place to ensure all commitments and obligations under the FFCO are completed, and that DOE take whatever actions are necessary to ensure DOE's obligations and commitments in the FFCO are fully funded.

19. The NMED's Department of Energy Oversight Bureau (DOEOB) was created in 1990 and is tasked with conducting independent environmental monitoring of DOE operations in New Mexico to help assure activities at DOE facilities are protective of public health and the environment. DOEOB operations are intended to evaluate the adequacy of DOE activities related to environmental monitoring; establish comprehensive, coordinated environmental oversight and monitoring programs; facilitate a better understanding by local and Tribal governments and the general public on the environmental impacts, if any, associated with DOE operations; and to support periodic State monitoring of discharges,

emissions, or biological parameters as necessary to verify the effectiveness of DOE programs within New Mexico.

20. The DOEOB develops and implements environmental multi-media monitoring programs at DOE facilities in New Mexico that include groundwater, surface water, wastewater, air, biota (flora and fauna), terrestrial (sediments and soils), direct penetrating radiation, and atmospheric deposition. Technical staff propose sampling and surveillance projects to monitor environmental conditions, make independent decisions about how to complete the sampling and surveillance projects, conduct environmental investigations/sampling campaigns; verify and validate analytical data produced from environmental investigations/sampling campaigns and report findings to the public; evaluate facility programs and impacts to the environment and the public; and facilitates public understanding of operational and environmental issues surrounding DOE facilities in the New Mexico through public outreach opportunities. Administrative staff coordinate with other agencies, conduct meetings with departments/organizations in and outside of the NMED, design and direct the gathering, tabulating and interpreting of required data; are responsible for overall program evaluation and for staff performance evaluation; are responsible for financial management of DOEOB Section specific grant budgets; and assist DOEOB Chief with required reporting.

21. DOEOB is funded by three separate grant awards, each issued out of the DOE Environmental Management Consolidated Business Center ("EMCBC"): LANL under agreement/award DE-EM0005293, funded by both DOE-EM (~55%) and DOE-NNSA (~45%), and awarded on October 1, 2025; SNL/NM under agreement/award DE-

EM0005294, funded by both DOE-EM (27%) and DOE-NNSA (73%), and awarded on October 1, 2025; and WIPP under agreement/award DE-EM0005230, funded by DOE-EM (100%), and awarded on July 1, 2021. Each agreement/award is to support independent environmental monitoring of DOE operations in New Mexico, to help assure activities at DOE facilities are protective of public health and the environment.

22. The Federal Automated Standard Application for Payments (ASAP) system is utilized by the Department to submit invoices for reimbursement from the DOE for work performed under the agreements/awards identified above.

23. On November 20, 2024, NMED was informed that invoices for reimbursement submitted to DOE-EM and DOE-NNSA for DOEOB work done at SNL/NM would be separated going forward. NMED was instructed that work performed at SNL/NM was to be invoiced at 27% to DOE-EM and 72% to DOE-NNSA.

24. Between October 2023, when the agreement/award was granted, and March 19, 2025, NMED submitted all invoices for work performed under agreement/award DE-EM0005294 to account #89000001/24 (“Slash24 Account”) using the ASAP system.

25. Unbeknownst to NMED, on February 27, 2025, DOE-NNSA added \$503,943.00 to a separate account in the ASAP system, #89000001 (“Base Account”), to fund DOE-NNSA reimbursement submissions from NMED. The NMED was not immediately told this, and only found out after the NMED Grant Section discovered the account on March 3, 2025.

26. On March 31, 2025, DOEOB Chief Masse emailed EMCBC, informing them that current burn rates indicated DOE-NNSA funding available in the DE-EM0005294 Base Account would be exhausted by roughly April 11, 2025.

27. On April 1, 2025, the remaining balance of \$177,892.95 in the Slash24 Account was removed by DOE without any notice to NMED that funds would no longer be available in this account to invoice DOE-EM's portion of reimbursement obligations. The Slash24 Account had a \$0 balance from April 1, 2025, until May 27, 2025, thus preventing NMED from submitting for reimbursement from the account specifically designated for DOE-EM.

28. On April 8, 2025, NMED having determined that no money existed in the Slash24 Account, and believing funding from the Base Account would be exhausted by April 11, NMED reached out to EMCBC on April 9, 2025, to seek clarification on funding and payment from grant agreement/award DE-EM0005294. EMCBC's Frank Batz replied the same day stating that the issue was caused by funding from two entities going into the same ASAP account and the issue would be resolved. This issue has still not been resolved.

29. On April 16, 2025, an additional \$226,050.05 was removed from the Base Account by the NNSA, leaving a balance of \$154,564.96. On the same day, NMED Grant Section Manager Bill Lane reached out to ASAP accountant Trinita Kane by email for assistance in understanding where the funding for the Slash24 Account had been moved from and how best to invoice for reimbursement under agreement/award DE-EM0005294 going forward. Trinita responded by email the same day explaining that the remaining balance of \$154,564.96 would be available for NMED to invoice from the Base Account until such time additional funds are released on the next modification award.

30. Accordingly, beginning May 2, 2025, NMED invoiced the Base Account for DOE-NNSA's reimbursement obligations, but noting that no money existed in the Slash24 Account, DOEOB also invoiced the Base Account for DOE-EM's reimbursement obligations. Instead of being reimbursed as expected, NMED was provided with a notice that the payment must be approved by FPA before the money is released.
31. Since the Slash24 Account had no money in it until May 27, 2025, and approvals for payment have not been processed out of the Base Account since May 2, DOEOB has been forced to operate without a stable funding source to fully execute the approved scope of work on agreement/award DE-EM0005294 for months.
32. The DOEOB consists of staff that are 100% funded by the aforementioned agreements/awards, as described below.

Federal Site	Approximate Monthly Burn Rate	Number of Staff	Grant Funds Exhausted
Sandia National Labs	\$57,000	6	October 1, 2025
Los Alamos National Labs	\$182,000	7	October 1, 2025
Waste Isolation Pilot Plant	\$32,000	2	July 1, 2025

33. In addition to forcing NMED to ensure funding was available to pay these employees, funding shortfalls to the Department's DOEOB have resulted in the following actions:
- a. Department staff that contribute to multiple oversight sections within the DOEOB shifted their work efforts from agreement/award DE-EM0005294 at the Sandia Oversight Section to activities within the Los Alamos Oversight Section and WIPP Oversight Section.

- b. Multi-media environmental monitoring samples collected that have hold times of 6-months or greater are being archived indefinitely. Any samples having hold times of less than 6-months continue to be shipped to third-party analytical laboratories for processing until current funding is exhausted.
- c. The DOE/OB, as it is related to Sandia Oversight Section, has suspended all travel, training, and supply purchases that are not deemed critical for daily operations.
- d. Overall, uncommunicated changes to account balances and disruptions to account availability have been problematic and have introduced operational instability. These disruptions impede effective revenue management and compromise NMED's ability to sustain consistent and timely program implementation.
34. On May 27, 2025, multiple modification awards were uploaded to the Slash24 Account in the amount of \$944,678.68. So, for the first time since April 1, 2025, money is in that account.
35. On June 3, 2025, the NMED Grants team withdrew the unprocessed May 2, 2025, invoice to the Base Account and instead invoiced the Slash24 Account for both DOE-EM and DOE-NNSA invoices for February and March 2025 expenses. Those invoices were processed in the ASAP system on the same day and released to NMED on June 4, 2025.

IV. VIOLATIONS

36. Breach of FFCO Section XIV.A, requiring Respondents to ensure that all obligations and commitments under the FFCO are fully and timely funded, including submitting timely and sufficient budget requests to ensure those obligations and commitments are met.

37. Breach of FFCO Section XIV.C, requiring Respondents to assure adequate funds or appropriations are available to comply with the FFCO and STP, and to notify the Department within 30 days of learning that funds are not available.

V. COMPLIANCE SCHEDULE

38. Based upon the foregoing findings and conclusions, Respondent is hereby ordered to take the following corrective actions, according to the following schedule, to achieve compliance with the HWA, STP, and FFCO:

- a. By September 1, 2025, provide a signed commitment by DOE-EM and NNSA to meet all financial obligations towards agreements DE-EM0005293 and DE-EM0005294 on or before October 1, 2025, for Federal Fiscal Year 2026.
- b. Provide notice of any funding account changes, if they occur, to DOEOB, and a six month funding distribution schedule.
- c. After review and comment by DOEOB, DOE shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this DOEOB workplan
- d. DOEOB shall provide an annual work plan with an estimated funding amount based upon the needs of the work plan to DOE, which DOE-EM will provide to NNSA.

e. Amend the FFCA to explicitly include NNSA as a responsible party under the agreement.

VI. CIVIL PENALTIES AND ADMINISTRATIVE COMPLIANCE COSTS

39. In consideration of the fact that DOE has replaced the money that was removed, the NMED will assess no civil penalties for this violation. However, the Department has incurred a number of administrative costs related to addressing this matter and assessing corrective actions for the above-described violations, which would not have been incurred had DOE properly funded and communicated with DOEOB, so NMED hereby assesses DOE administrative compliance costs in the amount of \$8,478.15.

Costs shall be paid to:

VII. NOTICE OF POTENTIAL ADDITIONAL PENALTIES

40. If the Respondent fails to comply in a timely manner with the Schedule of Compliance, the Secretary may assess additional civil penalties of up to \$25,000.00 for each day of continued noncompliance pursuant to NMSA 1978, Section 74-4-10(C) of the HWA.

VIII. RIGHT TO ANSWER AND REQUEST A HEARING

41. Pursuant to NMSA 1978, Section 74-4-10(H) of the HWA, and the Department's Adjudicatory Procedures, 20.1.5.200 NMAC, the Respondent may file a written request for a public hearing with the Hearing Clerk no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

42. Clearly and directly admit, deny, or explain each of the factual assertions contained in this Order with regard to which the Respondent has knowledge. Where the Respondent has no knowledge of a particular factual allegation, the Respondent shall so state, and the Respondent may deny the allegations on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. 20.1.5.200(A)(2)(a) NMAC.
43. Indicate any affirmative defenses upon which the Respondent intends to rely. Any affirmative defenses not asserted in the Request for Hearing, except a defense asserting a lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200(A)(2)(b) NMAC.
44. Be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct. 20.1.5.200(A)(2)(c) NMAC.
45. Include a copy of this Order attached. 20.1.5.200(A)(2)(d) NMAC. The Answer and Request for Hearing shall be filed with the Hearing Clerk at the following address:

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

46. Respondent must also serve a copy of the Answer and Request for Hearing on counsel for the Department (see paragraph 45), pursuant to 20.1.5.200(A)(1) NMAC.

IX.

FINALITY OF ORDER

47. This Order shall become final unless the Respondent files a Request for Hearing and Answer with the Hearing Clerk within thirty (30) days after the date of receipt of the Order pursuant to NMSA 1978, Section 74-4-10(H).

X. SETTLEMENT CONFERENCE

48. Whether or not the Respondent requests a hearing and files an Answer, the Respondent may confer with the Department concerning settlement, pursuant to 20.1.5.600(B) NMAC. Settlement is encouraged at any time if the settlement is consistent with the provisions and objectives of the HWA and regulations. Settlement discussions do not extend the 30-day deadline for filing the Respondent's Answer and Request for Hearing or alter the deadlines for compliance with this Order. 20.1.5.600(B)(1) NMAC. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. The Respondent may appear at the settlement conference on its own behalf or may be represented by legal counsel.

49. Any settlement reached by the Parties shall be finalized by written settlement agreement and stipulated final order. A settlement agreement must serve to resolve all issues raised in the Order, shall be final and binding on all Parties to the Order, and shall not be appealable.

50. To explore the possibility of settlement in this matter the Respondent may contact Zachary Ogaz, General Counsel, Office of General Counsel, New Mexico Environment Department, 1190 S. Saint Francis Drive, Suite North 4050, Santa Fe, New Mexico, (505) 470-8151, zachary.ogaz@env.nm.gov.

XI.

TERMINATION

51. This Order shall terminate when the Respondent certifies that all requirements of this Order have been met and the Department has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.

XII.

COMPLIANCE WITH OTHER LAWS

52. Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations.

XIII.

AUTHORITY OF SIGNATORIES

53. Pursuant to the Department's Delegation Order dated _____, the Cabinet Secretary has delegated the authority to issue Compliance Orders under the Hazardous Waste Act and HWMRs to the Chief of the Hazardous Waste Bureau.

DATE: _____

**JOHN DAVID NANCE, CHIEF
HAZARDOUS WASTE BUREAU
NEW MEXICO ENVIRONMENT DEPARTMENT**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid on this ____ day of May 2025, via Certified Mail, Return Receipt Requested, to the following:

Zachary Ogaz, General Counsel
New Mexico Environment Department