

NMED is an agency of the executive branch within the government of the State of New Mexico.

2. NMED, through its HWB, is charged with administration and enforcement of the HWA and HWMR.

3. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement the federal Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §§ 6901 to 6992k, within the state. The HWMR incorporate portions of 40 Code of Federal Regulation (“CFR”) §§ 260 through 270, 40 CFR § 279 and related federal regulations by reference.

4. The State of New Mexico adopted the federal hazardous waste regulations by reference on June 14, 2000. The State of New Mexico subsequently amended the HWMR on March 1, 2009 and on December 1, 2018, to adopt changes to the federal hazardous waste regulations.

5. Respondents are each a “person” within the meaning of NMSA 1978, Section 74-4-3(M) of the HWA.

6. Respondent DOE is a department of the United States Government. It is the owner and a co-operator of the Waste Isolation Pilot Plant (“WIPP”).

7. WIPP is a disposal facility for Transuranic (“TRU”) mixed waste that was generated at various DOE laboratories within the United States. WIPP is located in Eddy County, New Mexico approximately 23.5 miles East of the City of Carlsbad and approximately 45.5 miles Southwest of the City of Hobbs.

8. Respondent SIMCO is a private limited liability company under contract with DOE and the co-operator of WIPP.

9. Respondents jointly operate the WIPP Facility under a Hazardous Waste Treatment and Storage Permit issued by the Department on October 27, 1999 (“Permit”), with EPA Identification Number NM0890010515 pursuant to NMSA 1978, Section 74-4-10 of the HWA. The Permit has been modified numerous times since that date. The Permit authorizes the Respondents to store and dispose of mixed waste.

10. In addition to being a permitted facility, WIPP is a large quantity generator of hazardous waste, a small quantity handler of universal waste, a mixed waste generator, and a used oil generator as defined in the HWMR.

B. HISTORY OF NON-COMPLIANCE FROM NON-FINANCIAL RECORDS REVIEW INSPECTION

11. On November 22, 2022 Respondent DOE notified NMED of a change in operational control of the WIPP facility from the co-operator Nuclear Waste Partnership, LLC (“NWP”) to the co-operator SIMCO. To the extent that any of the history of noncompliance at the WIPP facility provided below has been utilized for the adjustment of civil penalties, that information should not be construed to place liability solely on Respondent SIMCO, independent of the calculation of penalties as result of violations previously cited by NMED to Respondent DOE, which has maintained operational control as a co-operator over the past ten years.

12. During the 10-year period between April 2013 and April 2023, NMED conducted a total of eight (8) Compliance Evaluation Inspections (“CEI”) at the WIPP Facility. NMED also performed a combined total of four (4) Non-Financial Records Review Inspections (“NRR”) over this time period, concerning records related to hazardous waste management at Respondents’ Facility. NMED did not observe any violations during four (4) of the CEIs performed, and likewise did not determine any violations from three (3) of the NRRs that were

performed.

13. NMED performed an NRR on February 19, 2014, as a result an underground fire that occurred on February 5, 2014 and a subsequent release of mixed waste constituents that occurred on February 14, 2021 from the reaction of a mixed waste container disposed in a Hazardous Waste Disposal Unit . NMED determined 13 violations as a result of the NRR:

- a) Failure to comply with all conditions of the Permit, in violation of Permit Condition (“PC”) 1.7.1, referencing 20.4.1.900 NMAC, incorporating 40 CFR § 270.30(a).
- b) Failure to take all reasonable steps in the event of noncompliance with the Permit, to minimize releases to the environment and to carry out such measures as are reasonable to prevent significant adverse impacts on human health or the environment, in violation of PC 1.7.6 referencing 20.4.1.900 NMAC, incorporating 40 CFR § 270.30(d).
- c) Failure to maintain and operate WIPP to minimize the possibility of a fire or unplanned release of TRU mixed waste or mixed waste constituents to environmental media which could threaten human health or the environment, in violation of PC 2.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.31.
- d) Failure to submit a written notice of the fire within five (5) days of the time the Respondents become aware of the circumstances, in violation of PC 1.7.13.3, referencing 20.4.1.900 NMAC, incorporating 40 CFR § 270.30(l)(6)(ii).

- e) Failure to conduct adequate personnel training, in violation of PC 2.8.2, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.16.
- f) Failure to have an internal communications or alarm system capable of providing immediate emergency instruction (voice or signal) to Facility personnel, in violation of PC 2.10.1.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.32(a).
- g) Failure to test and maintain emergency equipment as necessary to assure its proper operation in time of emergency, as specified in Permit Attachment E, in violation of PC 2.10.2, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.33.
- h) Failure to immediately implement the Contingency Plan when there was a fire that threatened human health or the environment, in violation of PC 2.12.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.51(b).
- i) Failure to prevent undue exposure of personnel to hazardous waste, in violation of PC 2.11, referencing 20.4.1.900 NMAC, incorporating 40 CFR § 270.14(b)(8).
- j) Failure to provide oral notification to NMED within 24 hours of becoming aware of the release of hazardous waste or hazardous waste constituents, in violation of PC 1.7.13.1.ii, referencing 20.4.1.900 NMAC, incorporating 40 CFR § 270.30(l)(6)(i).
- k) Acceptance, management, storage, and disposal of 508 containers of ignitable wastes, in violation of Permit Attachment B; 2.9, referencing 20.4.1.200 NMAC, incorporating 40 CFR § 261.21 and 261.22.

- l) Acceptance, management, storage, and disposal of 508 containers of incompatible wastes, in violation of Permit Attachment B; 2.9, referencing 20.4.1.200 NMAC, incorporating 40 CFR § 261.21 and 261.22.
- m) Failure to verify the completeness and accuracy of a Waste Stream Profile Form, in violation of Permit Attachment C; 5a(2).

14. On January 22, 2016, Respondent DOE, former co-operator NWP, and NMED executed a Stipulated Final Order resolving violations resulting from the NRR performed February 19, 2014. As a result of this Order, Respondent DOE agreed to perform Supplemental Environmental Projects associated with improvements to transportation routes used for the transportation of transuranic waste to WIPP, the funding of external triennial reviews of environmental regulatory compliance and operations at WIPP, funding enhanced training and capabilities for local emergency responders, and the establishment of an offsite emergency operations center. The total estimated cost for completion of these Supplemental Environmental Projects was \$37,000,000.00.

15. During the CEI on December 7, 2016, NMED observed two (2) violations including:

- a) Failure to station emergency response equipment as specified in the Permit, in violation of PC 2.10.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.32.
- b) Failure to maintain a clearly legible label or marking on all contact-handled mixed waste packages indicating the package contains mixed waste, in violation of PC 3.7.2. This violation was corrected at the time of the inspection.

16. On December 15, 2016, Respondent DOE provided remaining corrective action documentation for the violation alleged in paragraph 15a above.
17. On December 16, 2016, NMED sent Respondent DOE a Notice of Violation and Resolution (“NOVRTC”) resolving the alleged violations from the December 7, 2016 inspection.
18. During the CEI on May 1, 2018, NMED observed one violation:
 - a) Failure to maintain records of the job title for each position at the facility related to hazardous waste management and the name of the employee filling each job, in violation of PC 2.8.3, referencing 20.4.1.500 NMAC, incorporating 40 CFR § 264.16(d)(1).
19. On June 28, 2018, Respondent DOE provided corrective action documentation for the violation alleged in paragraph 18a above.
20. On August 1, 2018, NMED sent Respondent DOE an NOVRTC resolving the alleged violation from the May 1, 2018 inspection.
21. During the CEI on February 26, 2019, NMED observed one violation:
 - b) Failure to maintain sufficient aisle space at a hazardous waste storage area, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.255. The violation was corrected during the inspection.
22. On March 27, 2019, NMED sent Respondent DOE an NOVRTC resolving the alleged violation from the February 26, 2019 inspection.
23. During the CEI on January 31, 2022, NMED observed one violation:
 - a) Failure to store used oil in a container that is in good condition, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.22(b)(1). The violation was corrected during the inspection.

24. On June 6, 2022, NMED sent Respondent DOE an NOVRTC resolving the alleged violation from the January 31, 2022 inspection.

C. HWA INVESTIGATION – April 17, 2023

25. On April 17, 2023, NMED conducted a routine Inspection.

26. The Inspection included a physical review of the Facility. Records required to be maintained at the Facility according to the Permit and HWMR were submitted to NMED for electronic review following the physical review.

27. During the Inspection, NMED identified three (3) potential violations.

28. The HWMR provide that owners and operators of hazardous waste TSDFs must minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of Transuranic mixed waste or mixed waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment, as required by PC 2.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR §264.31.

29. During the Inspection, NMED inspectors observed excess accumulation of combustible materials at the following locations:

- a. The underground maintenance shop.
- b. Near the underground Satellite Accumulation Area (“SAA”).

30. The HWMR provide that Small Quantity Handlers of universal waste must label universal waste lamps with the words “universal waste”, or with other wording to identify the waste, as required by 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC.

31. During the Inspection, NMED inspectors observed an unlabeled box containing universal waste lamps at the underground SAA.

32. The HWMR provide that Small Quantity Handlers of universal waste must demonstrate the length of time universal waste has accumulated, as required by 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c).

33. During the Inspection, NMED inspectors observed a box containing universal waste lamps at the underground SAA, that was not marked with an accumulation start date or associated with an accumulation log.

D. CORRECTIVE ACTION DOCUMENTATION RECEIVED

34. During the Inspection, Respondents provided NMED with photographic documentation showing that a label and accumulation start date had been applied to the box of universal waste lamps observed in the underground SAA.

35. On November 7, 2023, and November 20, 2023 Respondents provided NMED with photographic documentation showing that excess combustible material had been removed from the underground maintenance shop and the area near the underground SAA.

II. VIOLATIONS

A. HWA INVESTIGATION – April 17, 2023

36. Respondents' failure to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of Transuranic mixed waste or mixed waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment is a violation of PC 2.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR §264.31.

37. Respondents' failure to label universal waste lamps with the words "universal waste", or with other wording to identify the waste is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC.

38. Respondents' failure to demonstrate the length of time universal waste has accumulated is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c).

III. SCHEDULE OF REQUIRED COMPLIANCE ACTIONS

39. Based upon the foregoing findings and conclusions, Respondents are hereby ordered to take the following corrective actions, according to the following schedule, to achieve compliance with the HWA and the HWMR.

A. HWA INVESTIGATION – April 17, 2023

40. No later than 30 days after this Order becomes final, Respondents shall submit a written response describing in detail all corrective actions taken by Respondents in response to the violations identified herein. The response shall include photos, procedures, documents, and any other relevant records, that document the actions taken by the Respondents to remedy any compliance deficiencies related to the Inspection.

a. The Respondents' written response shall contain a description of corrective actions to ensure excess combustibles will not be stored in the underground for an unreasonable length of time, consistent with PC 2.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR §264.31.

b. The Respondents' written response shall contain a description of corrective actions to ensure universal wastes shall be properly labeled, consistent with 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC.

c. The Respondents' written response shall contain a description of corrective actions to ensure universal waste accumulation shall be appropriately tracked at the WIPP Facility, consistent with 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c).

IV. CIVIL PENALTY

41. Pursuant to NMSA 1978, Sections 74-4-10(B) and 74-4-12 of the HWA, the Respondent is liable for a civil penalty of up to \$10,000.00 per day of noncompliance for each violation of the HWMR. The Department hereby assesses a civil penalty of \$20,630.00 against the Respondents for the above-described HWA violations, itemized as follows:

- a. Failure to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of Transuranic mixed waste or mixed waste constituents to air, soil, groundwater, or surface water which could threaten human health or the environment, which is a violation of PC 2.1, referencing 20.4.1.500 NMAC, incorporating 40 CFR §264.31: \$20,000.
- b. Failure to label universal waste lamps with the words “universal waste”, or with other wording to identify the waste, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.14(e) and 20.4.1.1001(B) NMAC: \$270.
- c. Failure to demonstrate the length of time universal waste has accumulated, which is a violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 273.15(c): \$360.

42. Additionally, NMED assesses the costs incurred by the Department associated with ensuring compliance for the above-described violations. The Department hereby assesses compliance costs in the amount of \$1,737.39, calculated to include NMED personnel costs associated with inspecting the facility and ensuring return to compliance.

43. No later than 30 days after this Order becomes final, Respondent shall make payment of the civil penalty and the administrative compliance costs to the State of New Mexico-Hazardous Waste Emergency Fund by certified check, bank draft or other guaranteed negotiable instrument, and mailed to or hand delivered to:

Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, New Mexico 87505.

The payment shall be accompanied by a transmittal letter, with a copy sent to counsel for the

Department.

V. NOTICE OF POTENTIAL ADDITIONAL PENALTIES

44. If 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 for each day of continued noncompliance pursuant to NMSA 1978, Section 74-4-10(C) of the HWA.

VI. RIGHT TO ANSWER AND REQUEST A HEARING

45. Pursuant to NMSA 1978, Section 74-4-10(H) of the HWA, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, Respondents 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:

a. Clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, Respondents shall so state, and Respondents may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.

b. Assert any affirmative defenses upon which Respondents intend to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.

c. 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.

d. 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

Respondents must also serve a copy of the Request for Hearing on counsel for the HWB.

VII. FINALITY OF ORDER

46. This Order shall become final unless Respondents file a Request for Hearing and Answer with the Hearing Clerk within 30 days after the date of receipt of this Order pursuant to NMSA 1978, § 74-4-10(H).

VIII. TERMINATION

53. This Order shall terminate when Respondents certify 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.

IX. COMPLIANCE WITH OTHER LAWS

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

JohnDavid Nance

**JOHNDAVID NANCE, CHIEF
HAZARDOUS WASTE BUREAU**



Digitally signed by JohnDavid Nance

Date: 2024.08.20 13:22:13 -06'00'

DATE:

CERTIFICATE OF SERVICE

I hereby certify that, on August 21, 2024, the foregoing Administrative Compliance Order was mailed, postage prepaid,, via Certified Mail, Return Receipt Requested, to the following:

Michael Gerle
ERCD Director
Department of Energy
Carlsbad Field Office (CBFO)
P.O. Box 3090
Carlsbad, NM 88221-3090

Rick Chavez
Director
Los Alamos Technical Associates, Inc.
400-2 Cascades Avenue, Suite 203
Carlsbad, NM 88220

Raquel Chavez

Raquel Chavez, Paralegal,
New Mexico Environment Department
Office of General Counsel 1190 S. St.
Francis Drive, Suite N-4050 Santa Fe, NM
87505
505-490-0063