



September 19, 2023

Pasquale Paduano  
Branch Manager  
Advanced Chemical Treatment  
6133 Edith Boulevard NE  
Albuquerque, NM 87107

**RE: ADMINISTRATIVE ORDER  
ADVANCED CHEMICAL TREATMENT, INC.  
EPA ID# NMD002208627**

Dear Mr. Paduano:

On February 17, 2021, the New Mexico Environment Department (“NMED”) conducted a Compliance Evaluation Inspection at Advanced Chemical Treatment, Inc (“ACT”), located at 6137 Edith Blvd NE, Albuquerque, New Mexico (“Facility”). During the inspection, NMED inspectors observed several alleged violations at the Facility specific to ACT’s Permit with NMED’s Hazardous Waste Bureau (“HWB”).

Based on that Inspection and a review of the information obtained, NMED is issuing Administrative Compliance Order No. HWB-24-01 (“Order”) to ACT, under the New Mexico Hazardous Waste Act (“HWA”), NMSA 1978, §§ 74-4-1 to -14, and the New Mexico Hazardous Waste Management Regulations (“HWMR”), 20.4.1 NMAC. NMED has also assessed a civil penalty of \$745,000.00 based on the alleged violations.

Please review the Order carefully to understand what action must be taken to comply with the conditions of the Permit as it relates to the HWA and HWMR. Pursuant to NMSA 1978 § 74-4-10(H) of the HWA, ACT has a right to answer the allegations in the Order and request a hearing.

Pursuant to the NMED Delegation Order dated March 24, 2023, 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. Please address any written responses to this letter to my attention. Please respond within 30 days from the receipt of this letter.

SCIENCE | INNOVATION | COLLABORATION | COMPLIANCE

Mr. Paduano  
September 19, 2023  
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If you have any questions regarding this Order, please contact NMED Hazardous Waste Bureau Compliance and Technical Assistance Program ("CTAP") Manager Aaron Coffman by phone 505-690-5211 or email at [aaron.coffman@env.nm.gov](mailto:aaron.coffman@env.nm.gov).

Sincerely,

**Ricardo Maestas** Digitally signed by Ricardo  
Maestas  
Date: 2023.09.19 11:16:44 -06'00'

Ricardo Maestas  
Acting Chief  
Hazardous Waste Bureau

RM: ac

cc: Aaron Coffman, NMED HWB  
Levi Cole, NMED District I Manager  
Lisa Chai, NMED OGC

file: Library # 2420

**STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT**

<b>NEW MEXICO ENVIRONMENT</b>	)	
<b>DEPARTMENT,</b>	)	
<b>Complainant,</b>	)	<b>ADMINISTRATIVE ORDER</b>
	)	<b>NO. HWB-24-01</b>
<b>v.</b>	)	
	)	
<b>ADVANCED CHEMICAL TREATMENT,</b>	)	
<b>INC.,</b>	)	
<b>EPA ID #: NMD002208627</b>	)	
<b>Respondent.</b>	)	
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**ADMINISTRATIVE COMPLIANCE ORDER**

Pursuant to the New Mexico Hazardous Waste Act (“HWA”), New Mexico Statutes Annotated (“NMSA”) 1978, §§ 74-4-1 to -14, the Hazardous Waste Bureau (“HWB”) of the Resource Protection Division (“Division”) of the New Mexico Environment Department (“NMED”), issues this Administrative Compliance Order (“Order”) to Advanced Chemical Treatment, Inc. (“ACT”, “Respondent” or “Permittee”). This Order requires that ACT, located at 6137 Edith Blvd, NE, Albuquerque, New Mexico, comply with the HWA and the Hazardous Waste Management Regulations (“HWMR”), 20.4.1 New Mexico Administrative Code (“NMAC”), and assesses civil penalties for violations of the HWA and the HWMR.

**I. FINDINGS**

**A. PARTIES**

1. Pursuant to the Department of Environment Act, NMSA 1978, §§ 9-7A-1 to -15, 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. Respondent is a “person” within the meaning of NMSA 1978, Section 74-4-3(M) of the HWA.

6. Respondent is a New Mexico for-profit corporation.

7. Respondent operates under a Treatment, Storage, and Disposal Facility (“TSDF”) Permit, and is a Used Oil Transfer Facility, Large Quantity Generator, and Universal Waste Handler Facility, under EPA I.D. Number NMD002208627.

8. Respondent’s facility is located at 6137 Edith Blvd, NE, Albuquerque, New Mexico (“Facility”).

## **B. HISTORY OF NONCOMPLIANCE**

9. During the 10-year period between January 2011 and January 2021, NMED conducted a total of four Compliance Evaluation Inspections at Respondent’s facility. Each of these inspections resulted in a formal enforcement action.

10. During the Compliance Evaluation Inspection on September 18, 2012, NMED observed sixteen (16) violations including:

- a) Failure to appropriately complete training, in violation of Permit Condition (“PC”) II.F.2 and Permit Attachment J, AC J.1.
- b) Failure to properly complete pre-acceptance inspection sheets (PAIS) for incoming generator waste, in violation of PC II.C.1 and Permit Attachment D, ACs *Physical Acceptance of Waste at the Facility* and *Waste Tracking and the Operating Record*.
- c) Failure to properly record information on the daily inspection logs, in violation of PC II.E.4 and Permit Attachment F, AC *Inspection Schedule and Checklist*.
- d) Failure to test and maintain decontamination equipment, in violation of PC II.E.2, Permit Attachment F, AC *Inspection Schedule and Checklist*, PC II.I.2, and Permit Attachment H, Table H-2.
- e) Failure to label or mark containers storing hazardous waste so that they can be appropriately tracked with the Operating Record, in violation of PC II.L.1, III.H and Permit Attachment D, AC *Waste Tracking and the Operating Record*.
- f) Failure to limit ignitable and reactive hazardous waste container stacking to no more than two high, in violation of PC III.J.3.
- g) Failure to keep hazardous waste containers in good condition, in violation of PC III.C.
- h) Failure to store a hazardous waste container in a manner that would prevent the container from rupturing or causing it to leak, in violation of PC III.E.
- i) Failure to take precautions to prevent the accidental of reactive waste, in

violation of PC III.J.2 and Attachment C, *AC Additional Container Information*.

- j) Failure to comply with manifest requirements, in violation of PC II.K and Permit Attachment I, *AC Manifesting*.
- k) Failure to maintain sufficient aisle space in a Container Storage Facility to allow for the unobstructed movement of personnel and fire protection equipment to any area of the facility in an emergency, in violation of PC II.I.4 and Attachment G, *AC Required Aisle Space*.
- l) Failure to maintain and operate the facility in a manner which minimizes the possibility of a fire, in violation of PC II.A and the definition of the Facility and Container Storage Facility at PC I.D, and Attachment C, *AC Introduction*.
- m) Failure to have a detailed chemical and physical analysis of a representative sample of a hazardous waste, in violation of PC II.C.1 and Attachment D, *AC Physical Acceptance of Waste at the Facility*.
- n) Failure to maintain an accurate operating record with the location of each hazardous waste in the TSDF, in violation of PC I.I.5 and Attachment I, *AC Record Keeping*.
- o) Failure to post sufficient warning signs on all gates and fences at the Facility, in violation of PC II.D.2 and Attachment E, *AC Description of Warning Signs*.
- p) Storage of hazardous waste outside the Container Storage Facility permitted for storage, in violation of Attachment C, *AC Design and operation of the Container Storage Facility*, and Permit Modification HWB-ACT-11-003.

11. On September 5, 2014, Respondent and NMED executed a Stipulated Final Order resolving violations resulting from the Compliance Evaluation Inspection performed September 18, 2012. As a result of this Order, Respondent paid a civil penalty of \$87,100.00 to NMED.

12. During the Compliance Evaluation Inspection on October 17, 2014, NMED observed seventeen (17) violations including:

- a) Failure to store used oil for a period of less than 35 days as is required for a used oil transfer facility, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.45(a).
- b) Failure to store hazardous waste inside the Waste Handling Building, in violation of PC II.A.1.
- c) Failure to label or mark containers storing hazardous waste so they can be appropriately tracked with the Operating Record, in violation of PC II.L.1.
- d) Failure to store hazardous waste containers at least 15 meters (50 feet) from the Facility's property line, in violation of PC III.J.1.
- e) Failure to appropriately sample waste, in violation of PC II.C.4 and Permit Attachment D.
- f) Failure to properly complete uniform hazardous waste manifests, in violation of PC II.K and Permit Attachment I.
- g) Failure to maintain an accurate operating record, in violation of PC II.L.1.
- h) Failure to keep containers holding hazardous waste in good condition, in violation of PC III.C.
- i) Failure to store containers in a manner that would prevent rupture or cause

leaks, in violation of PC III.E.

- j) Failure to properly complete and retain the Pre-Acceptance Inspection Sheets (“PAIS”) for inbound hazardous waste, in violation of PC II.C.1, referring to Permit Attachment D.
- k) Failure to respond to a release of used oil to the environment, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.22(d)(3).
- l) Failure to notify NMED of a newly discovered Area of Concern, in violation of PC IV.B.1.
- m) Failure to post proper warning signs on the property boundary fence, in violation of PC II.D.2.
- n) Failure to amend the Contingency Plan (“CP”), in violation of PC II.J.3.
- o) Failure to make a hazardous waste determination, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.
- p) Failure to maintain the Facility security barrier, in violation of PC II.D.1.
- q) Failure to submit an Exception Report to the NMED for uniform hazardous waste manifests not signed to indicate the waste had been received at the designated Treatment Storage or Disposal Facility (“TSD”), in violation of PC II.K.
- r) Failure to repair the deterioration to the roof of the Waste Handling Building, in violation of PC II.E.3.
- s) Failure to correctly characterize an inbound hazardous waste, in violation of PC II.C.1.

13. On February 22, 2016, Respondent and NMED executed a Stipulated Final



Order resolving violations resulting from the Compliance Evaluation Inspection performed October 17, 2014. As a result of this Order, Respondent paid a civil penalty of \$143,190.00 to NMED.

14. During the Compliance Evaluation Inspection on May 16, 2017, NMED observed sixteen (16) violations including:

- a) Failure to submit waste to a qualified lab to perform a detailed chemical analysis when knowledge of process is not adequate for determination, in violation of PC II.C.1 referencing Permit Attachment D, Waste Characterization and 20.4.1.500 NMAC, incorporating 40 CFR § 264.13.
- b) Failure to maintain the security barrier fence at the Facility to prevent unknowing entry of unauthorized person or livestock into the Facility, in violation of PC II.D.1 referencing Permit Attachment E and 20.4.1.500 NMAC, incorporating 40 CFR § 264.14(b)(2)(i).
- c) Failure to keep bilingual security fence signs at the Facility legible from a distance of at least 25 feet, in violation of PC II.D.2 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.14(c).
- d) Failure to properly record information on the Inspection log for the Facility, in violation of PC II.E.4 referencing Permit Attachment F and 20.4.1.500 NMAC, incorporating 40 CFR § 264.15(d).
- e) Failure to maintain required aisle space at the Facility, in violation of PC II.I.4 referencing Permit Attachment C and 20.4.1.500 NMAC, incorporating 40 CFR § 264.35.
- f) Acceptance of hazardous waste at the Facility from an outside source without

an accompanying manifest, in violation of PC II.K and 20.4.1.900 NMAC.

- g) Failure to contact the designated facility to determine the status of the hazardous waste after not receiving a copy of the manifest with a handwritten signature within 35 days of the date the waste was accepted for transport, in violation of PC II.K and 20.4.1.500 NMAC, incorporating 40 CFR § 264.71(c), referring to 262.42(a)(1).
- h) Failure to submit an exception report to NMED after not receiving the final signature from the destination facility within 45 days, in violation of PC II.K and 20.4.1.500 NMAC, incorporating 40 CFR § 264.71(c), referring to 262.42(a)(2).
- i) Failure to submit a letter to NMED within 15 days for accepting hazardous waste without the accompanying manifest, in violation of PC II.K and 20.4.1.500 NMAC, incorporating 40 CFR § 264.76(a).
- j) Failure to include the EPA ID numbers in the 2015 Biennial Report, in violation of PC II.L.2 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.75(c).
- k) Failure to keep a copy of the latest closure cost estimate at the Facility during the operating life of the Facility, in violation of PC II.N.4 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.142(d).
- l) Failure to transfer hazardous waste from a container that was not in good condition to one that was in good condition, in violation of PC III.C and 20.4.1.500 NMAC, incorporating 40 CFR § 264.171.
- m) Failure to store containers in a manner that would prevent rupture or cause

leaks, in violation of PC III.E and 20.4.1.500 NMAC, incorporating 40 CFR § 264.173(b).

- n) Failure to keep hazardous waste containers at the Facility that are incompatible separated by a dike, berm, wall or other device, in violation of PC III.K.3 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.177(c).
- o) Failure to properly record the location of each hazardous waste container at the Facility in the operating record, in violation of Permit Attachment D, Waste Tracking and Operating Record and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73(b)(2).
- p) Failure to report the quantities of used oil accepted at the Facility on a biennial basis, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.57(b)(3).

15. On September 22, 2017, NMED was notified by New Mexico Department of Information Technology Dispatch of a fire at the Facility. On September 25, 2017 NMED inspectors met with the Respondent to conduct a Facility walk-through and discuss the events of the fire.

16. As a result of the May 16, 2017 Compliance Evaluation Inspection, NMED issued an ACO to the Respondent on October 26, 2017 alleging the sixteen (16) violations described above in paragraph 14 and an additional two (2) violations related to the September 22, 2017 fire:

- a) Failure to ensure that the Facility was operated to minimize the possibility of a fire, explosion, or any sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil or surface water, which could

threaten human health or the environment, in violation of PC II.A and 20.4.1.500 NMAC, incorporating 40 CFR § 264.31.

- b) Failure to submit a written report within five (5) calendar days from the time Respondent became aware of the noncompliance (fire event), in violation of PC I.E.13.b and 20.4.1.900 NMAC, incorporating 40 CFR § 270.30(l)(6)(iii).

17. On February 12, 2018, Respondent and NMED executed a Stipulated Final Order resolving violations resulting from the ACO issued October 26, 2017. As a result of this Order, Respondent paid a civil penalty of \$101,600.00 to NMED.

18. During the Compliance Evaluation Inspection on November 5, 2018, NMED observed sixteen (15) violations including:

- a) Failure to store used oil for a period of less than 35 days as is required for a used oil transfer facility, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.45(a).
- b) Failure to label containers of used oil with the words “Used Oil”, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.45(g).
- c) Failure to respond to a release of used oil to the environment, in violation of 20.4.1.1002 NMAC, incorporating 40 CFR § 279.45(h).
- d) Failure to make a hazardous waste determination, in violation of 20.4.1.300 NMAC, incorporating 40 CFR § 262.11.
- e) Failure to store hazardous waste containers at least 15 meters (50 feet) from the Facility’s property line, in violation of PC III.J.1. and 20.4.1.500 NMAC, incorporating 40 CFR § 264.176.
- f) Failure to manage and store hazardous waste only in the seven rooms of the

Container Storage Facility (“CSF”), in violation of PC I.B.6.

- g) Storage of hazardous waste at the Container Storage Facility for greater than one year, in violation of PC III.A.1.d.
  - h) Failure to label or mark containers for waste tracking, in violation of Permit Attachment D, page 7 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73(b)(2).
  - i) Failure to store hazardous waste containers in a manner that would prevent rupture or cause leaks, in violation of PC III.E and 20.4.1.500 NMAC, incorporating 40 CFR § 264.173(b).
  - j) Storage of quantities of hazardous waste exceeding the permitted maximum volume of 55,000 gallons, in violation of PC III.B.2.
  - k) Failure to post legible warning signs on the property boundary fence, in violation of PC II.D.2 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.14(c).
  - l) Failure to properly characterize waste through the submittal of the waste stream profiles to a qualified lab to perform a detailed chemical analysis when knowledge of process is not adequate for determination, in violation of PC II.C.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.13(a).
  - m) Failure to maintain an accurate operating record, in violation of PC II.L.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73.
  - n) Failure to label universal waste batteries, in violation of 20.4.1.1000 NMAC, incorporating 40 CFR § 263.14(a) and 20.4.1.1001(B) NMAC.
19. On October 17, 2019, Respondent and NMED executed a Stipulated Final Order

resolving violations resulting from the Compliance Evaluation Inspection performed November 5, 2018. As a result of this Order, Respondent paid a civil penalty of \$360,285.00 to NMED.

**C. HWA INVESTIGATION – February 17, 2021**

20. On February 17, 2021, NMED conducted a routine Compliance Evaluation Inspection (“Inspection”).

21. The Inspection included a physical review of the Facility. Records required to be maintained at the Facility according to Respondent’s permit were submitted to NMED for electronic review following the physical review.

22. During the Inspection, NMED identified five potential violations.

23. The HWMR provide that owners and operators of hazardous waste TSDFs must manage and store hazardous waste in the Container Storage Facility and at no other locations on the Facility, as required by Permit Condition (“PC”) I.B.6.

24. During the Inspection February 17, 2021, NMED inspectors observed two trailer trucks, identified as T-1125 and T-1166, storing hazardous waste located at the loading dock of the Facility. Trailer trucks T-1125 and T-1104 were accepted into the Facility more than 4 days prior to the inspection. These trailers were not being actively unloaded at the time of the inspection. Storage of hazardous waste, per EPA guidance, refers to managing hazardous waste at a location for a period greater than 24 hours.

25. The HWMR provide that owners and operators of hazardous waste TSDFs must complete records of facility inspections as provided in the Hazardous Waste Facility Permit Attachment F, including recording the nature of repairs or other remedial actions as required by 20.4.1.500 NMAC incorporating 40 CFR § 264.15(d); PC II.E.4.

26. During the Inspection February 17, 2021, NMED inspectors reviewed facility

inspection records and determined that the inspection record for February 28, 2019 was not completed. Also, ACT did not record information regarding repairs or remedial actions performed on inspection records for November 14 and 15, 2019. Specifically, on November 14, 2019 Facility staff noted in the inspection record that a label had deteriorated and that a pallet of waste was improperly stored; and on November 15, 2019 Facility staff noted in the inspection record that there was insufficient aisle space. Neither these nor the subsequent records state that these deficiencies were corrected.

27. The HWMR provide that owners and operators of hazardous waste TSDFs shall not use knowledge of process in lieu of detailed chemical analysis and must ensure that all hazardous waste destined for management or storage at the CSF complies with the waste characterization and analysis procedures described in Permit Attachment D, Waste Analysis Plan, as required by 20.4.1.500 NMAC, incorporating 40 CFR § 264.13(a); PC II.C.1.

28. During the Inspection February 17, 2021, NMED inspectors reviewed the Operating Record and determined that the following containers were mischaracterized due to the waste description indicating the waste should have additional waste codes:

- c) D293550-2: should have been classified as a D001;
- d) D317571-1: should have been classified as D009;
- e) D322323-2: should have included a D001 code;
- f) D324834-2: should have included a D003 code;
- g) D328627-15: should have been classified as D002;
- h) D332508-1: should have included the D007 and D009 codes;
- i) D329968-16: should have included a D003 code;
- j) D335872-3: t should have included a D007 code; and

k) D337331-2: should have been classified as D001.

29. The HWMR provide that owners and operators of hazardous waste TSDFs shall maintain an accurate written operating record, as required by 20.4.1.500 NMAC, incorporating 40 CFR § 264.73(b)(2); Permit Attachment D.

30. During the Inspection February 17, 2021, NMED reviewed the Operating Record and determined that the physical state of each waste stream was not properly recorded in the operating record. ACT failed to include the physical state of the hazardous waste approximately 100 times.

31. The HWMR provide that owners and operators of hazardous waste TSDFs shall complete and submit a biennial report to NMED by March 1 of the following even numbered year and must cover activities during the previous year, as required by 20.4.1.500 NMAC, incorporating 40 CFR § 264.75; PC II.L.2.

32. During the Inspection February 17, 2021, NMED reviewed the Biennial Report submitted March 2020 for Calendar Year 2019, and determined that ACT did not accurately report the hazardous waste codes for waste shipments on page GM52. On page GM52 of the 2019 Biennial Report ACT reported sending 1,534,821.09 lbs. of hazardous waste fuels containing several hazardous waste codes, including codes for acutely toxic hazardous wastes, which do not correspond to the codes indicated on the relevant hazardous waste manifests.

## **II. VIOLATIONS**

### **A. HWA INVESTIGATION – February 17, 2021**

33. Respondent's failure to manage and store hazardous waste only in the CSF is a violation of PC I.B.6.

34. Respondent's failure to completely record inspections is a violation of PC II.E.4.



35. Respondent's failure to submit the waste stream profiles to a qualified laboratory to perform a detailed chemical analysis when knowledge of process is not adequate for determination is a violation of PC II.C.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.13(a).

36. Respondent's failure to maintain an accurate operating record is a violation of PC II.L.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73(b)(2).

37. Respondent's failure to submit a Biennial Report that accurately describes waste management activities in Calendar Year 2019 is a violation of PC II.L.2 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.75.

### **III. SCHEDULE OF COMPLIANCE**

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 and the HWMR.

#### **A. HWA INVESTIGATION – February 17, 2021**

39. No later than 30 days after this Order becomes final, Respondent shall submit a written response describing all corrective actions taken by Respondent 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 Respondent to remedy any compliance deficiencies related to the February 17, 2021 inspection.

a. The Respondent's written response shall contain a description of corrective actions to ensure hazardous waste is managed and stored only in the CSF, consistent with PC I.B.6.

b. The Respondent's written response shall contain a description of

corrective actions to ensure facility inspection records are properly completed, consistent with PC II.E.4.

c. The Respondent's written response shall contain a description of corrective actions to ensure waste stream profiles are submitted to a qualified laboratory to perform a detailed chemical analysis when knowledge of process is inadequate for determination, consistent with PC II.C.1 and Permit Attachment D.

d. The Respondent's written response shall contain a description of corrective actions to ensure that the Operating Record is accurately maintained, consistent with PC II.L.1 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.73(b)(2).

e. The Respondent's written response shall contain a description of corrective actions to ensure that future Biennial Reports accurately report the hazardous waste codes of the hazardous wastes offered for treatment and disposal during each odd numbered year, consistent with PC II.L.2 and 20.4.1.500 NMAC, incorporating 40 CFR § 264.75.

#### **IV. CIVIL PENALTY**

40. Pursuant to NMSA 1978, Sections 74-4-10(B) and 74-4-12 of the HWA, 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 \$745,000.00 against Respondent for the HWA violations described above.

41. No later than 30 days after this Order becomes final, Respondent shall make payment 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.

A copy of the transmittal letter shall be sent to counsel for the Department.

**V. NOTICE OF POTENTIAL ADDITIONAL PENALTIES**

42. 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.

43. Pursuant to NMSA 1978, Section 74-4-4.2(D) of the HWA, the Secretary of the Environment may deny any permit application or modify, suspend or revoke any permit issued pursuant to the Hazardous Waste Act if the applicant or permittee has: (1) knowingly and willfully misrepresented a material fact in the application for a permit; (2) refused to disclose the information required under the provisions of Section 74-4-4.7 NMSA 1978; (3) been convicted in any court, within ten years immediately preceding the date of submission of the permit application, of: (a) a felony or other crime involving moral turpitude; or (b) a crime defined by state or federal statutes as involving or being in restraint of trade, price-fixing, bribery or fraud; (4) exhibited a history of willful disregard for environmental laws of any state or the United States; (5) had any permit revoked or permanently suspended for cause under the environmental laws of any state or the United States; or (6) violated any provision of the Hazardous Waste Act, any regulation adopted and promulgated pursuant to that act or any condition of a permit issued under that act.

44. Due to Respondent's repeated and severe violations of the HWA, HWMRs and the conditions of the Respondent's Hazardous Waste Facility Permit, the Secretary of the Environment hereby provides notice to Respondent of the potential revocation of Respondent's Hazardous Waste Facility Permit.

45. Pursuant to NMSA 1978, Section 74-4-4.2(H) of the HWA, no ruling shall be

made on permit issuance, major modification, suspension or revocation without an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing; provided, however, that the secretary may, pursuant to Section 74-4-10 NMSA 1978, order the immediate termination of a research development and demonstration permit whenever the secretary determines that termination is necessary to protect human health or the environment and may order the immediate suspension or revocation of a permit for a facility that has been ordered to take corrective action or other response measures for releases of hazardous waste into the environment.

46. Pursuant to NMSA 1978, Section 74-4-4.2(F) of the HWA, Respondent may provide the Secretary of the Environment with a written action plan to demonstrate rehabilitation. If approved, the Secretary of the Environment may issue a conditional permit for a reasonable period of time, as specified in the approved action plan.

47. No later than 30 days after this Order becomes final, Respondent shall either submit a written action plan demonstrating rehabilitation, including: (1) implementation by the Respondent of formal policies; (2) training programs and management control to minimize and prevent the occurrence of future violations; (3) installation by the applicant or permittee of internal environmental auditing programs; and (4) any other relevant factors that may be considered by the Secretary of the Environment; or shall provide notice to NMED of the intent to close the Facility.

#### **VI. RIGHT TO ANSWER AND REQUEST A HEARING**

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

a. Clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, Respondent shall so state, and Respondent 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 Respondent intends 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

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

## **VII. FINALITY OF ORDER**

49. This Order shall become final unless Respondent files 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. SETTLEMENT CONFERENCE**

50. Whether or not Respondent requests a hearing and files an Answer, Respondent may confer with the HWB concerning settlement. Settlement is encouraged consistent with the provisions and objectives of the HWA. 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. Settlement discussions may be pursued as an alternative to and simultaneously with the hearing proceedings. Respondent may appear at the settlement conference on its own behalf or may be represented by legal counsel.

51. 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.

52. To explore the possibility of settlement in this matter, Respondent may contact Lisa Chai, Office of General Counsel, New Mexico Environment Department, 121 Tijeras Ave. NE, Suite 1000, Albuquerque, New Mexico 87102, (505) 500-7628; [lisa.chai1@env.nm.gov](mailto:lisa.chai1@env.nm.gov).

### **IX. TERMINATION**

53. This Order shall terminate when 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.

### **X. 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.

Ricardo Maestas

Digitally signed by Ricardo  
Maestas  
Date: 2023.09.19 11:26:05 -06'00'

**DATE: 9/19/2023**

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**RICARDO MAESTAS, ACTING CHIEF  
HAZARDOUS WASTE BUREAU**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Administrative Compliance Order was mailed postage prepaid on this \_\_\_\_\_ day of September 2023, via Certified Mail, Return Receipt Requested, to the following:

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Lisa Chai, Assistant General Counsel  
New Mexico Environment Department