

Permit

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 7, 2007

David Gregory
Federal Project Director
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Department of Energy
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Los Alamos, NM 87544

David McInroy
Remediation Services Deputy Project Director
Los Alamos National Laboratory
P.O. Box 1663, Mail Stop M992
Los Alamos, NM 87545

**RE: STATUS OF "OUTSTANDING" DOCUMENTS REQUIRED UNDER THE
MARCH 1, 2005 ORDER ON CONSENT FOR LOS ALAMOS NATIONAL
LABORATORY (LANL)
EPA ID #NM0890010515**

Dear Messrs. Gregory and McInroy:

The New Mexico Environment Department (NMED) takes this opportunity to address the regulatory status of five documents thought by the Department of Energy (DOE) and the Los Alamos National Security, LLC (LANS) to be awaiting NMED notice as defined in Section III.M.2 of the March 1, 2005 Order on Consent (Order). A brief description of the applicable history of each document as well as its current status is presented. NMED also provides clarification as to why notice of these documents has not yet occurred.

1) Material Disposal Area (MDA) G Investigation Report:

The Permittees submitted the *Investigation Report for MDA G, consolidated unit 54-013(b)-99* on November 2, 2005. NMED issued a Notice of Disapproval (NOD) for the Investigation Report on July 26, 2006 because the Permittees failed to define the nature and extent of contamination, a primary objective of the approved work plan and a requirement in Section



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IV.C.1.c.i of the Order. Although NMED considers submittal of a report that does not substantially comply with the approved work plan -- a clear violation of the Order, NMED chose not to cite the Permittees for a violation, or otherwise impose penalties for noncompliance. Rather, to augment the first phase of investigative work, the Permittees were directed to submit a Supplemental Work Plan to determine the extent of vapor-phase contamination at MDA G. This direction constituted a direction to modify and notice under Section III.M.2 of the Order.

The *Work Plan for Supplemental Sampling at MDA G, consolidated unit 54-013(b)-99* was submitted to NMED on September 26, 2006. The Supplemental Work Plan was approved on November 13, 2006. The Permittees are currently implementing the approved Supplemental Work Plan. The Supplemental Investigation Report is due to NMED on May 19, 2007. NMED cannot approve the Investigation Report until the Supplemental Investigation Report is reviewed and NMED determines that it achieves the objectives of the approved work plan.

2) MDA G Corrective Measures Evaluation:

The *Corrective Measures Evaluation (CME) Work Plan for MDA G, Consolidated Unit 54-013(b)-99* was submitted to NMED on June 5, 2006. NMED has not reviewed the CME Work Plan because the Permittees have not yet completed their investigation nor established a groundwater monitoring network in and around MDA G. It is premature for NMED to review the CME Work Plan when the results of vapor-phase volatile organic compound (VOC) and tritium sampling have not been evaluated and there are no reliable groundwater data, information crucial to final remedy selection. The CME Work Plan submitted by the Permittees will likely need revision because it was prepared prior to completion of critical investigative work at MDA G and development of a plan for an effective groundwater monitoring network in the area. Although the CME Plan was submitted in a timely manner, the Permittees should consider withdrawing the CME Plan and submitting a revised version at the appropriate time (*e.g.*, following completion of all investigative work at MDA G).

3) MDA L Investigation Report:

The Permittees submitted the *Investigation Report for Material Disposal Area L, Solid Waste Management Unit 54-006, at Technical Area 54* (Report) in September 2005. NMED issued a NOD for the Report on January 17, 2006 because the primary objective of the approved work plan and a requirement in Section IV.C.1.e.i of the Order--determining lateral and vertical extent of contamination--was not achieved. The Permittees submitted the *Investigation Report for Material Disposal Area L, Solid Waste Management Unit 54-006, at Technical Area 54, Revision 1* (Revision 1) on March 10, 2006 because information pertaining to definition of lateral and vertical extent was not included in the first version of the Report. Although NMED considers submittal of an incomplete report a clear violation of the Order, NMED again chose not to cite the Permittees for a violation, or otherwise impose penalties for noncompliance. Rather, to avoid further delay of the investigation and eventual cleanup, NMED allowed the Permittees to submit a revised report.

Revision 1 did not satisfy the requirements of the aforementioned NOD; therefore NMED issued a NOD for Revision 1 on August 25, 2006, requiring the Permittees to submit a supplemental work plan for continued investigative work to further characterize lateral and vertical extent of contamination. Similar to MDA G, NMED considers the supplemental investigation activities and the establishment of a reliable groundwater monitoring network to be prerequisites for selecting corrective measures in the future. The Supplemental Investigation Report documenting additional borehole sampling and sampling of the surface impoundments at MDA L is due May 31, 2007.

4) Investigation Report for Solid Waste Management Unit (SWMU) 03-010(a):

The Permittees submitted the *Investigation Report for SWMU 03-010(a)* (Report) on August 31, 2005. NMED issued three subsequent NODs for the Report (February 20, 2006, April 3, 2006, and May 8, 2006), primarily because the Permittees failed to establish the source(s) of groundwater recharge. This is the only site for which NMED has been compelled to issue three NODs. Although NMED considers submittal of a report that does not substantially comply with the approved work plan a clear violation of the Order, NMED chose not to cite the Permittees for a violation, or otherwise impose penalties for noncompliance. NMED allowed the Permittees to conduct interim cleanup activities and report the results to NMED rather than being assessed penalties for the Permittees' failure to substantially comply with the Order.

In the third response to NOD (May 22, 2006), the Permittees committed to: 1) install pressure transducers in each of three monitoring wells to record water surface elevations; 2) quarterly monitoring; 3) a tracer test to determine the source(s) of recharge to the aquifer; and 4) sample the condensate from the evaporative cooler at Building SM-30 and submit the sample for laboratory analysis of tritium, deuterium, and isotopes of oxygen. To date, the Permittees have not reported the results of these activities to NMED. Although, the Permittees have not submitted the results of the interim activities, NMED has determined that the response to the third NOD was adequate and fulfills the requirements of the work plan. Therefore, NMED will issue, under separate cover, an approval of the Report in accordance with Section III.M.2 of the Order.

5) Middle Mortandad/Ten Site Aggregate Area Investigation Report:

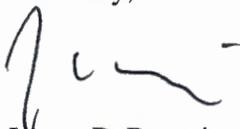
The Permittees submitted the *Investigation Report for Middle Mortandad/Ten Site Aggregate Area* (Report) on September 30, 2005. NMED issued a NOD on June 8, 2006 for several reasons, most notably the manner in which the risk assessment was conducted. The risk assessment was conducted on a sub-aggregate level, rather than by individual SWMU. As the Permittees are aware, NMED makes no further action (NFA) decisions for individual SWMUs, not for areas comprised of many SWMUs. The NOD required the Permittees to conduct a risk assessment on an individual SWMU/Area of Concern (AOC) basis and include it in the revised Report. The Permittees agreed to revise the risk assessment in their response to NOD dated July 11, 2006. In the response, the Permittees requested a nine month time extension to complete the risk assessment and additional sampling. NMED granted this time extension on August 14, 2006.

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The Permittees submitted a force majeure notification in accordance with Section III.H of the Order on February 6, 2007. The Permittees claimed that due to heavy snowfall, site work would be postponed and submittal of the revised Report would most likely be delayed. Even though the Permittees had previously requested, and were granted, a very long time extension to complete the work, NMED nevertheless granted the force majeure request on February 9, 2007. The revised Report is due on July 20, 2007.

Please contact me at (505) 476-6016 should you have any questions.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:kmc

cc: K. Chamberlain, NMED HWB
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