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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

July 15, 2010

George J. Rael
Environmental Operations Manager
Los Alamos Site Office
Department of Energy
3747 West Jemez Road, MS A316
Los Alamos, NM 87544

Michael Graham
Associate Director Environmental Programs
Los Alamos National Security, L.L.C.
P.O. Box 1663, MS 991
Los Alamos, NM 87545

**RE: LIST OF DOCUMENTS SUBJECT TO STIPULATED PENALTIES UNDER THE
MARCH 1, 2005 CONSENT ORDER FOR FEDERAL FISCAL YEAR 2011
LOS ALAMOS NATIONAL LABORATORY
EPA ID#NM0890010515
HWB-LANL-MISC**

Dear Messrs Rael and Graham:

On June 17, 2009, the New Mexico Environment Department (NMED) forwarded to the U.S. Department of Energy (DOE) and the Los Alamos National Security, L.L.C. (collectively, the "Permittees") a list of submittals proposed to be subject to stipulated penalties in federal fiscal year (FFY) 2011 (List) under the March 1, 2005 Consent Order (Order). Section III.G.1 of the Order requires that the Permittees and NMED confer on the proposed stipulated penalties list for the upcoming FFY on or before June 30th.

In a letter dated July 1, 2010 (Fiscal Year 2011 Stipulated Penalties List, referenced by EP2010-0310), the Permittees expressed concerns about NMED's proposed inclusion of the Material Disposal Area (MDA) T Remedy Completion Report, the MDA L Corrective Measures Evaluation (CME) Report, Revision 1, the MDA L Remedy Completion Report and the MDA H CME Report Revision 1 on the list. NMED has carefully considered the Permittees' concerns, and provides the following responses.

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MDA T Remedy Completion Report

The Permittees believe the due date for the MDA T Remedy Completion Report is unachievable because of the need for installation of additional regional aquifer monitoring wells, the need for groundwater data collection, and use of the data in selecting and implementing a remedy for the site, prior to development of the Remedy Completion Report. While these circumstances may constitute good cause for an extension, the Permittees have not submitted a request in accordance with Section III.J.2 of the Order citing such cause. The subject document will therefore be retained on the list.

MDA H CME Report Revision 1 and MDA L CME Report Revision 1

The Permittees state that the submittal dates for the revised MDA H and MDA L CME Reports are achievable, but that the Permittees will be unable to include the required minimum of four quarters of groundwater monitoring data for some wells that are part of the current groundwater monitoring network for the sites. The Permittees state that because the required groundwater monitoring data will not be included with the submittals, it is anticipated that NMED will find that the Permittees are not in substantial compliance with respect to the CME requirements of the Order. The Permittees request that NMED provide written concurrence that no enforcement action will be taken related to such noncompliance. As an alternative, the Permittees request to extend the due dates for submittal of the revised CME Reports until after four quarters of groundwater data have been collected from the wells that were installed less than one year in advance of the respective revised CME Report submittal dates to enable the Permittees to be in compliance with the CME requirements of the Order.

NMED has, in numerous pieces of correspondence, stressed the need for the Permittees to adequately characterize groundwater in the vicinity of MDAs G, H and L. The Permittees' failure to timely do so compelled NMED to direct the Permittees to implement additional groundwater investigations in 2007 to the present. This correspondence includes: *Well Evaluations for Intermediate and Regional Wells*, April 5, 2007; *Notice of Approval, Well Screen Analysis Report Revision 2*, May 25, 2007; *Approval With Direction, TA-54 Well Evaluation and Network Recommendations*, August 31, 2007; *Approval with Direction, Drilling Work Plan for Regional and Intermediate Wells at TA-54*, December 7, 2007; first *Notice of Disapproval MDA L Corrective Measures Evaluation Report*, June 2, 2008; *Notice of Disapproval MDA G Corrective Measures Evaluation Report*, November 20, 2008; second *Notice of Disapproval MDA L Corrective Measures Evaluation Report*, May 17, 2010.

The lack of groundwater data also was a key reason for NMED's selection of the complete encapsulation remedy for MDA H. NMED's Fact Sheet/Statement of Basis dated November 5, 2007 states "[i]n addition, the groundwater monitoring wells installed by the Permittees in the vicinity of MDA H (including R-20, R-22, R-32, and R-16) cannot provide reliable data to evaluate whether or not [volatile organic compounds] VOCs released from TA-54 have reached the regional aquifer." This statement was based on the Permittees own conclusions included in the *Well Screen Analysis Report*, November 2005 (referenced by LA-UR-05-8615 & ER2005-0841).

NMED declines to waive its enforcement discretion under the New Mexico Hazardous Waste Act for the CMEs for MDAs H and L, or for any action or inaction taken by the Permittees subject to statutory or regulatory activity. The Permittees proposed alternative is equally unacceptable as it will result in final cleanup of TA-54 extending beyond 2015. NMED therefore retains the subject documents on the List.

MDA L Remedy Completion Report

The Permittees state that the MDA L Remedy Completion Report due date is “inconsistent with the remedy selection and implementation processes specified in the Consent Order, and cannot be achieved.”

The due date for the MDA L Remedy Completion Report was established by agreement of the Permittees and NMED, as executed on March 1, 2005. Section III.J.2 (Provisions Governing Extensions of Time) of the Order outlines the procedures for requesting extensions of time. NMED has not received an extension request from the Permittees and therefore does not have cause to modify the submittal date or remove the Report from the List. NMED therefore retains the subject document on the List.

In accordance with Section III.G.I of the Order, NMED hereby transmits the attached final list of documents subject to stipulated penalties for FFY 2011.

Should you have any questions, please contact me at (505) 476-6016.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:kr

cc: K. Roberts, NMED HWB
T. Skibitski, NMED DOE OB
S. Yanicak, NMED DOE OB, MS M894
L. King, EPA 6PD-N
V. George, REG-DO, MS M991
E. Worth, DOE-LASO MS A316

File: '10 Reading and LANL Consent Order Misc

Documents Subject to Stipulated Penalties for Fiscal Year (FY) 2011 Pursuant to Section III.G.1 of the March 1, 2005 Compliance Order on Consent (Consent Order)

	Deliverable	Consent Order Submittal Date
1	MDA L CME Report, Revision 1	10/1/2010
2	Remedy Completion Report for TA-32 Accelerated Corrective Action	11/1/2010
3	Upper Cañada del Buey Aggregate Area Investigation Report	11/30/2010
4	MDA T Remedy Completion Report	12/19/2010
5	MDA H CME Report, Revision 1	12/31/2010
6	North Ancho Canyon Aggregate Area Phase II Work Plan	12/31/2010
7	MDA B Investigation/Remediation Report	12/31/2010
8	DP West Building 21-002 Building Foot Print Letter Work Plan	1/14/2011
9	Ancho/Chaquehui/Indio Canyons Investigation Report	2/28/2011
10	Middle Los Alamos Canyon Aggregate Area Phase II Investigation Report	3/31/2011
11	Lower Sandia Canyon Aggregate Area Investigation Report	3/31/2011
12	Potrillo/Fence Canyon Aggregate Area Investigation Report	5/15/2011
13	MDA C Phase III Investigation Report	6/30/2011
14	MDA L Remedy Completion Report	7/9/2011
15	Water Canyon/Cañon de Valle Investigation Report	8/31/2011