Permit

ENTERED

Environment Safety & Health
Associate Directorate
PO Box 1663, Mail Stop K491
Los Alamos, New Mexico 87545
(505) 667-4218

National Nuclear Security Administration
Los Alamos Field Office
3747 West Jemez Road, Mail Stop A316
Los Alamos, New Mexico 87544
(505) 667-5105/Fax (505) 667-5948

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Mr. John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environmental Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87595-6303

Subject: **Supplemental Environmental Project, LANL Triennial Review Scope of Work and Guidelines Regarding Settlement Agreement and Stipulated Final Order HWB-14-20**

Dear Mr. Kieling:

This letter transmits the LANL Triennial Review Scope of Work and Guidelines (Enclosure 1) associated with a supplemental environmental project as directed in the Settlement Agreement and Stipulated Final Order HWB-14-20, entered into by the New Mexico Environment Department (NMED) (Complainant), the U.S. Department of Energy (DOE), and Los Alamos National Security, LLC (LANS) (Respondents) on January 22, 2016.

Paragraph 38 of the Stipulated Final Order requires the Department of Energy to fund independent, external triennial reviews of environmental regulatory compliance and operations at LANL to ensure that any regulatory deficiencies are identified, and to submit to NMED a proposed LANL Triennial Review Scope of Work and Guidelines, by January 22, 2017, for comment and final approval by NMED.

Respondents would be pleased to meet with Hazardous Waste Bureau personnel to discuss and explain the documentation included herein.

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If you have comments or questions regarding this submittal, please contact John C. Bretzke (LANS) at (505) 665-3867 or Peter Maggiore (DOE, NA-LA) at (505) 665-5025.

Sincerely,

Michael T. Brandt, DrPH, CIH
Associate Director
Environment, Safety & Health
Los Alamos National Security, LLC
Los Alamos National Laboratory

Sincerely,

Kimberly Davis Lebak
Manager
Los Alamos Field Office
U.S. Department of Energy

MTB/KDL/JCB/PM:tav

Enclosure 1: LANL Triennial Review Scope of Work and Guidelines (LA-UR-17-20248)

Copy:
Butch Tongate, NMED, Santa Fe, NM, (E-File)
Kathryn M. Roberts, NMED, Santa Fe, NM, (E-File)
Jody M. Pugh, NA-LA (E-File)
Peter Maggiore, NA-LA, (E-File)
Lisa Cummings, NA-LA (E-File)
Jaime Navarro, NA-LA (E-File)
Karen E. Armijo, NA-LA, (E-File)
Craig S. Leasure, PADOPS, (E-File)
John C. Bretzke, EPC-DO, (E-File)
Deborah K. Woitte, LC-ESH (E-File)
lasomailbox@nnsa.doe.gov, (E-File)
epc-correspondence@lanl.gov, (E-File)
rcra-prr@lanl.gov, (E-File)
epccat@lanl.gov, (E-File)
adesh-records@lanl.gov, (E-File)

ENCLOSURE 1

Supplemental Environmental Project, LANL Triennial Review
Scope of Work and Guidelines Regarding Settlement Agreement
and Stipulated Final Order HWB-14-20

ADESH: 17-007

LA-UR-17-20248

Date: January 22, 2017

LANL Triennial Review Scope of Work and Guidelines

Background

This LANL Triennial Review Scope of Work and Guidelines (Guidelines) has been developed pursuant to the January 22, 2016, Settlement Agreement and Stipulated Final Order (Settlement Agreement) between the New Mexico Environment Department (NMED), the U.S. Department of Energy (DOE), and Los Alamos National Security, LLC (LANS); collectively, the Parties, in response to Section II.B.38 of the Settlement Agreement which was executed for the purpose of resolving Compliance Order No. HWB-14-20 (the Compliance Order), issued on December 6, 2014, related to Los Alamos National Laboratory (LANL or the Laboratory).

As one of five Supplemental Environmental Projects (SEPs), Section II.B.38(a) of the Settlement Agreement requires DOE to "...submit to NMED a proposed *LANL Triennial Review Scope of Work and Guidelines*, within one (1) calendar year of the effective date of this settlement agreement..."

Subsequent to execution of the Settlement Agreement, responsibility for oversight of legacy cleanup activities at LANL has been transitioned from the National Nuclear Security Administration (NNSA) to the Office of Environmental Management (EM). LANS is currently the contractor to both EM and NNSA for activities covered by this SEP. If either EM or NNSA enter into a contract with a new contractor before the obligations of this SEP are completed, EM and NNSA agree to impose the same SEP obligations as are now imposed upon LANS upon any successor contractor. This document describes the process that the Parties have agreed upon for the planning, executing, and closing of triennial reviews at LANL.

Representatives from NMED, DOE, and LANS began meeting in March 2016 to begin the development of the Guidelines document, discussing options and scope for this SEP. Meetings continued with the involved parties through the summer and into the fall of 2016. These Guidelines represent the conclusions and recommendations from those meetings.

Purpose/Objectives

Section II.B.38 of the Settlement Agreement states in part that "DOE will fund independent, external triennial reviews of environmental regulatory compliance and operations at LANL to ensure that any regulatory deficiencies are identified." The purpose of these Guidelines are to describe the process by which NMED, DOE and LANS will implement the requirements of the Settlement Agreement.

Triennial Review Scope Development

Prior to each triennial review, the Parties will discuss and agree upon the areas of regulatory compliance that the triennial review team will focus on. These shall be areas for which NMED has regulatory responsibility. For the initial triennial review, which is to be completed and made public before September 30, 2018, the Parties have agreed that the triennial review team will examine DOE's and LANS' compliance with the following permits/laws/regulations:

Hazardous Waste Permit, EPA I.D. Number NM0890010515, issued to DOE and LANS as co-permittees

New Mexico Hazardous Waste Act ("HWA"), NMSA 1978, Sections 74-4-1 to -14

New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC

Title V Operating Permit P100-R2 (or most recent), issued to LANS as the sole permittee

New Mexico Title V Air Quality Permitting Program (20.2.70 NMAC)

Groundwater Discharge Permits DP-857, DP-1589, DP-1793, and DP-1835, issued to DOE and LANS as co-permittees

Water Quality Control Commission regulations pertaining to ground water protection (20.6.2 NMAC).

Triennial Review Schedule

The parties will begin meeting and discussing the scope of subsequent triennial reviews approximately one year before the review is to begin. This lead time will provide the time necessary to agree on the time frame and scope of the next triennial review, and for DOE to procure and select a third party to perform the review.

Triennial Review Team Selection/Acquisition

The independent review will be obtained through the DOE procurement process. NMED and DOE will agree on the scope of the review before final selection of the subcontractor, and share views on the appropriateness of the candidate companies (review of non-obvious conflicts of interest, etc.)

Activities during the Triennial Review

The triennial review team shall only take direction from the DOE, consistent with the DOE's procurement practices.

The triennial review team will develop a plan and schedule that describes its approach and methods for performing the Triennial Review.

NMED may shadow the review, status meetings, close-out meeting, or other activities during the review. Prior notification (to support logistics, planning, etc.) will normally be provided to the DOE and LANS by NMED to support this activity.

The triennial review team will prepare a draft report for review by the Parties for factual accuracy before final publication.

Post Triennial Review Activities

DOE and LANS will make the report available to the public by posting a copy on the Electronic Public Reading Room (http://eprr.lanl.gov/oppie/service).

DOE and LANS will address potential regulatory violations identified in the triennial review.[1]

After each triennial review, the Parties will meet to discuss the review findings/issues, identify lessons learned, and opportunities for future reviews. A specific discussion topic should include the need for future reviews under this format and approach. It is anticipated that at a minimum two separate triennial reviews will be performed before enough data will have been generated to support a discussion on the need for additional reviews.

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[1] Settlement Agreement, Section II.B.38 (in part): "The Respondents, their constituent agencies, contractors, and affiliates agree to address any potential regulatory violations, identified in the triennial reviews. NMED agrees to refrain from taking any enforcement action against the Respondents, their constituent agencies, contractors and affiliates for any potential regulatory violations, or operational deficiencies, that could lead to potential environmental regulatory violations identified in the triennial reviews so long as the Respondents and their facility operators correct any deficiencies identified in the course of such reviews within sixty (60) calendar days of the finalization of each triennial review report, or for good cause shown, within another period of time beyond sixty (60) calendar days, if approved by NMED."