

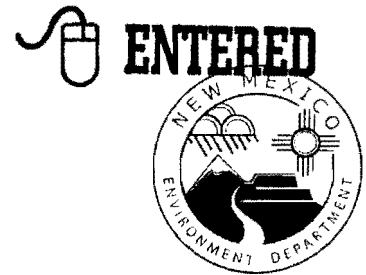
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ENVIRONMENT DEPARTMENT

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 27, 2009

David Gregory
Federal Project Director
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David McInroy
Remediation Services Deputy Project Director
Los Alamos National Laboratory
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Los Alamos, NM 87545

**RE: DIRECTION TO PREPARE A SEDIMENT SAMPLING WORK PLAN;
PAJARITO CANYON
LOS ALAMOS NATIONAL LABORATORY
EPA ID #NM0890010515
HWB-LANL-08-035**

Dear Messrs. Gregory and McInroy:

The New Mexico Environment Department (NMED) received the Pajarito Canyon Investigation Report (PCIR) on September 30, 2008 which is referenced by EP2008-0450.

After completing review of the PCIR, NMED issued a Notice of Disapproval (NOD) of the PCIR on November 21, 2008. The Permittees were directed to address all comments and submit a Revised PCIR by December 22, 2008. The Permittees were also directed to submit a Phase 2 Investigation Work Plan (Phase 2 IWP) to gather information consistent with various recommendations made by the Permittees in the PCIR. The NOD specified that the Phase 2 IWP was due February 27, 2009. On December 12, 2008, the Permittees submitted a time extension request for submittal of their response to the NOD and the Revised PCIR. The request was for a time extension to May 29, 2009 for submittal of the Revised PCIR. The Permittees did not include a request in the letter for a time extension to submit the work plans. NMED determined the Permittees had shown good cause for the time extension request and, on December 23, 2008, NMED approved a time extension to April 30, 2009 for submittal of the NOD response and the Revised PCIR. NMED did not change the due date for the work plan submittal(s) since an extension was not



requested by the Permittees. In a February 21, 2009 letter the Permittees requested another time extension for submittal of the draft NOD response and Revised PCIR. NMED approved the request on March 6, 2009. The approval provided for an April 30, 2009 submittal date for the draft NOD response and submittal of the final response and Revised PCIR on August 31, 2009. Extension of the due date for submittal of the work plans was not provided because an extension was not requested by the Permittees for those documents. The draft NOD response was received on April 30, 2009; however, the work plans have not been received by NMED.

NMED has completed review of the draft NOD response and is providing the following comments:

1. Response to NOD General Comment 1.

NMED requested additional discussion of apparent contaminant concentration increases in several Pajarito Canyon groundwater and surface water samples in 2007. Additional discussion of the results is needed in Section 7.2.2 to support future decisions at various Solid Waste Management Units (SWMUs) and Areas of Concern (AOCs) located within Pajarito Canyon.

The Permittees' response that "The Laboratory will provide additional discussion in Section 7.2.2. as requested." is not responsive to the comment or to the reasoning behind submittal of a "draft" response to the NOD. The Permittees did not indicate that new information will be acquired in coming weeks or months that would affect evaluation and discussion of the 2007 data. Discussion of the significance of the concentration increases must be provided by the Permittees in the final NOD response and Revised PCIR. If the Permittees' information is inadequate, the Permittees will be required to modify the PCIR within a short time frame after notification by NMED.

2. Responses to NOD Specific Comments 20 and 21.

In both comments, NMED requested preparation and submittal of a work plan to address the need for additional monitoring of Pajarito Canyon sediment and reporting of contaminant trends as recommended in the PCIR by the Permittees.

The Permittees' draft response to both comments indicates that sediment monitoring would be conducted "...through the Laboratory's Environmental Surveillance Program and reported in the annual Environmental Surveillance Report."

The Permittees' responses are not acceptable because the Permittees' proposed approach is not consistent with the requirements of the Consent Order. In addition, submittal of the required sediment monitoring work plans is now nearly three months past due.

In the draft response to Comment 20, the Permittees have indicated possible future

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submittal of a work plan to identify and fill any data gaps relative to evaluation of data from the on-going Sandia Canyon biota investigation. The Permittees have indicated that Section 9.0 of the Revised PCIR will identify possible data gaps associated with nest box monitoring and will present a schedule for submittal of a work plan to fill data gaps if such gaps are present. The Permittees' draft response to this item presents an acceptable approach.

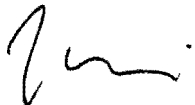
3. Responses to NOD Specific Comments 23 and 24.

In both comments NMED requested work plans to evaluate site conditions discussed in the individual comments. Based on NMED monitoring and evaluation of the Permittees' progress toward completion of the items discussed in the individual comments, NMED hereby withdraws its requirement for submittal of either work plan.

The Permittees shall submit a Pajarito Canyon Sediment Monitoring Work Plan by no later than October 1, 2009.

Please contact Daniel Comeau at (505) 476-6043, if you have any questions.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc:

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