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*Hazardous Waste Bureau*

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RON CURRY  
Secretary

SARAH COTTRELL  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

May 5, 2010

George J. Rael  
Environmental Operations Manager  
Los Alamos Site Office  
Department of Energy  
3747 West Jemez Road, MSA316  
Los Alamos, NM 87544

Michael Graham, Associate Director  
Environmental, Safety, Health and Quality  
Los Alamos National Security, L.L.C.  
P.O. Box 1663, MS K491  
Los Alamos, NM 87545

**RE: DENIAL  
REQUEST FOR DEVIATION FROM THE APPROVED INVESTIGATION  
WORK PLAN FOR PORTILLO AND FENCE CANYONS AGGREGATE AREA,  
REVISION 1  
LOS ALAMOS NATIONAL LABORATORY (LANL)  
EPA ID #NM0890010515  
LANL-09-015**

Dear Messrs. Rael and Graham:

The New Mexico Environment Department (NMED) has received the United States Department of Energy (DOE) and the Los Alamos National Security L.L.C.'s (LANS) (collectively, the Permittees) *Request for Deviation from the Approved Investigation Work Plan for Potrillo and Fence Canyons Aggregate Area, Revision 1*(Request), dated April 15, 2010 and referenced by EP2010-0175.

The Permittees state that “[w]hile developing the work documents required to perform the remediation safely, Los Alamos National Laboratory (the Laboratory) discovered that insufficient data are available for this site because previous sampling efforts were performed at an incorrect location.” Previous sampling in an incorrect location does not appear, on its face, to justify not executing remediation activities proposed in the approved work plan. The Permittees are implementing a presumptive remedy at Material Disposal Area (MDA) B at Technical Area (TA)-21 under similar conditions.

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The Request does not provide sufficient justification for granting the deviation. Furthermore, the Permittees have not explained how collecting soil samples from angled boreholes beneath MDA N will provide the information necessary to resolve safety issues.

The Permittees may resubmit the Request but must address, in detail, the following questions:

- 1) What worker safety concerns were overlooked by the Permittees when proposing the removal action in the Work Plan?
- 2) Why were the work documents required to perform the remediation safely not acquired or identified prior to submittal of the Work Plan?
- 3) Is it standard practice to conduct a thorough records review of a site prior to proposing investigation and/or remediation activities? What historical information was omitted during preparation of the work plan?

NMED assumes that investigation, remediation activities, or both proposed by the Permittees can be achieved. Put another way, NMED must assume that the Permittees propose only executable work in their work plans.

The Permittees must address the above questions if another request for deviation from the approved Work Plan is submitted. However, should another request be submitted, addressing these questions does not guarantee approval of the requested deviation; it does however, facilitate NMED's review of the Request. All submittals (including maps) must be in the form of two paper copies and one electronic copy in accordance with Section XI.A of the Order.

Messrs. Rael and Graham  
May 5, 2010  
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Please contact Kathryn Roberts at (505) 476-6041 should you have any questions.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

cc:

J. Kieling, NMED HWB  
D. Cobrain, NMED HWB  
K. Roberts, NMED HWB  
S. Yanicak, NMED DOE OB, MS M894  
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B. Wedgeworth, EP-TA-21, MS C349  
P. Huber, EP-TA-21, MS C349  
T. George, ADEP MS M991  
K. Lynnes, ADEP MS M991  
file: Reading and LANL'10, TA-15 (SWMU 15-007(a), MDA N)