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RON CURRY
Secretary

CINDY PADILLA
Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 19, 2007

David Gregory
Federal Project Director
Los Alamos Site Office
Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, NM 87544

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

**RE: EXTENSION REQUEST FOR SUBMITTAL OF THE DELTA PRIME SITE
AGGREGATE AREA INVESTIGATION REPORT
LOS ALAMOS NATIONAL LABORATORY, EPA ID #NM0890010515
HWB-LANL-04-011**

Dear Messrs. Gregory and McInroy:

The New Mexico Environment Department (NMED) is in receipt of the Department of Energy (DOE) and the Los Alamos National Security (LANS), LLC's (collectively, the Permittees) *Request for Extension for the Submittal of the Delta Prime Site Aggregate Area Investigation Report at Technical Area 21 Due to Changed Conditions*, referenced by EP2007-0437 and dated September 6, 2007. The Permittees' request addresses two issues: 1) a 90-day time extension for submittal of the Delta Prime Site Aggregate Area Investigation Report (IR); and 2) submittal of a separate investigation report which addresses the six "Investigation Sites".

The DP Site Aggregate Area Work Plan (Plan) was approved with modifications on April 13, 2005. A sampling notification was received on June 5, 2006 stating that sampling at the "Investigation Sites" would begin on or about June 26, 2006. A second sampling notification was received on September 8, 2006 stating that sampling at the "Corrective Action Sites" would begin on or about October 2, 2006. In all, three field seasons have passed since the approval letter was issued to complete the field work called for in the approved Plan.



NMED understands that field conditions can change unexpectedly. The March 1, 2005 Order on Consent (Order) contemplates this in Section III.H (Force Majeure). However, the table provided by the Permittees identifies conditions which could have and should have been anticipated, particularly if the Permittees had timely conducted field work. For example, the table states that, “[d]ue to active utilities Lock Out Tag Out training was required. Pipe and tank locations were not accurately on the engineering drawings, requiring additional excavation; an asbestos pipe was discovered requiring an asbestos-trained contractor and resulting in a total of 8 additional working days.” Given the age of the subsurface piping, the proximity to known active utility lines (at least in some cases), and the language in the approved Plan which contemplated “carefully removing” subsurface structures (due to underground utilities), the Permittees should have included Lock Out Tag Out training and an asbestos-trained contractor as part of their site preparation activities.

NMED notes that no single delay exceeded eight days, and even a total of 60 days should be able to be accommodated considering that the Permittees had 31 months to complete the approved field work. However, it is fallacious for the Permittees to assume that work was completed in discreet events, none conducted simultaneously, for purposes of calculating the delay. NMED knows this not to be the case. During NMED’s site visit conducted on August 22, 2007, multiple crews were observed working simultaneously at several sites. The number of days cannot simply be summed to provide a total overall delay. If a delay occurs at one site, the field crew moves on and conducts work at a different site. If two crews are being utilized (which was believed to be the case), one crew would continue working while the other stood down.

For the above reasons, NMED hereby denies the extension request. In accordance with the Order and NMED’s letter dated February 20, 2006, the Permittees are to submit one report for all sites included in the approved Plan by November 7, 2007. The Notice Date is September 7, 2008.

If you have any questions regarding this letter, please contact Kathryn Roberts at (505) 476-6041.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

Messrs. Gregory and McInroy
September 19, 2007
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cc: K. Roberts, NMED HWB
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file: Reading and LANL '07 (TA-21)