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JON GOLDSTEIN
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 7, 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: NOTICE OF DISAGREEMENT OF FORCE MAJEURE
STATUS REPORT FOR SOLID WASTE MANAGEMENT UNIT 21-014,
MATERIAL DISPOSAL AREA A, AT TECHNICAL AREA 21**

Dear Messrs. Gregory and McInroy:

The New Mexico Environment Department (NMED) is in receipt of the *Notification of Force Majeure for the Status Report for Solid Waste Management Unit 21-014, Material Disposal Area A, at Technical Area 21*, dated November 29, 2007 and referenced by EP2007-0753 (Notification). The U.S. Department of Energy (DOE) and the Los Alamos National Security, LLC (LANS) (collectively, the "Respondents") state in the Notification that "exceptionally dry subsurface conditions slowed the collection of subsurface pore-gas samples" and "multiple power outages at the analytical laboratory processing the tritium samples" were the cause for a delay in field operations and sample processing at MDA A. The Respondents assert that decreased moisture conditions resulted in longer than anticipated sample collection events and power disruptions caused a loss of data; recounting of samples was therefore required.

Pursuant to Section III.H.3 of the March 1, 2005 Order on Consent (Order), NMED is providing written notice of its disagreement that a force majeure event has occurred. NMED's May 29, 2007 letter addressing the Respondents' *Response to the Approval with Modifications* dated March 15, 2007, required the Respondents to collect one additional round of tritium pore-gas samples from previously sampled depths at five locations (21-



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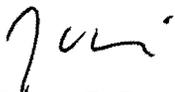
26485, 21-26481, 21-26596, 21-26588, and 21-26484); collection of pore-gas samples for volatile organic compound (VOC) analysis was required at location 21-26593.

A force majeure under Section III.H of the Order means “any event arising from causes beyond the reasonable control of the Respondents or their respective agents, contractors, or employees that delays or prevents the performance of any of the obligations of the Respondents under the Order and that could not be overcome by due diligence.” Although the Respondents did not provide an accounting of time lost for either condition, they have had six months to obtain the one round of tritium and VOC samples since being notified of the additional sampling requirements. The 15-day sampling notification dated September 5, 2007, stated that sampling was scheduled to begin on September 20, 2007. However, sampling did not commence until November 16, 2007. By delaying the sampling until only 14 days before the document due date, the Respondents did not allow for sufficient contingencies to be built into the project.

Drought conditions have existed in northern New Mexico since at least the mid 1990's. Relatively dry subsurface conditions should have been anticipated. Likewise, sound project planning would have reduced or eliminated the impact of temporary power outages. Had sufficient contingencies been incorporated into the project scope, a delay of three days due to these factors could have and should have been mitigated.

Hence, the events described in the Notification do not meet the definition of a force majeure. Please contact Kathryn Roberts at (505) 476-6041 should you have any questions.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: D. Cobrain, NMED HWB
K. Roberts, NMED HWB
S. Yanicak, NMED DOE OB, MS J993
T. Skibitski, NMED DOE OB
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S. Stiger, ENV MS J591
file: Reading and LANL '07 TA-21 (SWMU 21-014)