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Deputy Secretary

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

December 18, 2007

Donald L. Winchell, Jr., Manager
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Los Alamos, NM 87544

Richard Watkins, Director
Environment, Safety, Health, & Quality
Los Alamos National Security, LLC
Los Alamos Research Park
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Los Alamos, NM 87545

RE: REPLY TO LANL'S RESPONSE TO THE INTENT TO ASSESS STIPULATED PENALTIES, DELTA PRIME SITE AGGREGATE AREA INVESTIGATION REPORT, TECHNICAL AREA 21, LOS ALAMOS NATIONAL LABORATORY, EPA ID #NM0890010515 HWB-LANL-04-011

Dear Messrs. Winchell and Watkins:

The New Mexico Environment Department (Department) is in receipt of the U.S. Department of Energy (DOE) and the Los Alamos National Security, LLC's (LANS) (collectively, the Respondents) letter entitled, *Response to Intent to Assess Stipulated Penalties Delta Prime Site Aggregate Area Investigation Report, Technical Area 21* (Response), referenced by EP2007-00783 and dated December 11, 2007. The Respondents state that "the Investigation Report complies with the intent and specifications set forth in the approved Investigation Work Plan (IWP) and therefore the March 1, 2005 Order on Consent." The Department does not concur.

In their Response, the Respondents state that the revised Section 5.0, submitted to the Department in July 2005, "reflected the uncertainty regarding the status of mission completion in some facilities and the utilities that service these structures." The Respondents explained that the Work Plan described how solid waste management units (SWMUs) and consolidated units (CUs) located where active utilities or buildings were present would be addressed in the future. The approved Work Plan (including revised Section 5): 1) identified SWMUs and CUs that contained



active pipelines; 2) verified the status of SWMUs and CUs prior to commencement of field activities; 3) stated that pipelines in use or near active utilities would be removed at a later date (when no longer active); and 4) stated that portions of SWMUs underneath structures would be addressed when the areas became accessible.

While the approved Work Plan contemplated the uncertainty of achieving the objectives at *all* SWMUs and CUs at DP Site Aggregate Area, the language in the Introduction of Section 5 was specific about what circumstances would prevent the Respondents from removing pipelines and addressing inaccessible SWMUs. Section 5 states that “[p]ortions of SWMUs underneath structures would be addressed when the areas became accessible.” Because there is no discussion concerning the portions of SWMUs that are *not* underneath structures (and therefore accessible), portions of SWMUs not located beneath structures would in fact be investigated and remediated in accordance with the approved Work Plan and the results of those activities provided in the Investigation Report. For example, CU 21-006(c)-99 (consisting of SWMUs 21-006(a-d)) is considered a facility-impacted site according to Plate 1, *DP Site Aggregate Area facility-impacted site status*, of the Report. The drainline associated with this CU was removed from the outfall to Building 21-002 and samples obtained from the outfall area. However, results of these activities were not included in the Report.

The Respondents’ letter states they “did not plan or budget for less efficient and complicated field activities at any areas where access was restricted to active facilities and utilities.” The Respondents are obligated to conduct whatever planning and budgeting is necessary to achieve compliance with the Order. They had ample time to do so, as the Work Plan was approved in April of 2005. Engineering solutions could have been developed to access all of the sites over the two and half years since the Work Plan was approved. The Respondents also state that they “will continue to complete the approved scope as expeditiously as possible so that the investigatory results can be reported to NMED and decisions regarding potential future actions at these sites can be made.” This is an admission that the approved scope has yet to be completed, in which case the Investigation Report clearly cannot comply with the specifications set forth in the Order.

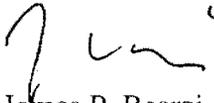
In a letter dated April 3, 2007, DOE revealed that it may not meet the Investigation Report milestone for DP Site Aggregate Area. DOE went on to explain that “our work related to these milestones was delayed in part by limits placed on the use of Congressionally appropriated funds for new projects under a series of short-term Continuing Resolutions for Appropriations beginning in October 2006.” DOE clearly saw its inability to complete the approved scope of work at DP Site Aggregate Area was due to a lack of sufficient funding rather than issues associated with accessibility.

NMED therefore reaffirms its position that the Report does not substantially comply with the specifications set forth in the approved Work Plan and the Order. NMED suggests the Respondents not submit a schedule for the additional data reporting of field activities at the alleged impacted SWMUs, as the schedule for submittal already exists in the approved Work Plan.

Messrs. Winchell and Watkins
December 18, 2007
Page 3

Please do not hesitate to contact me at 505-476-6016 should you have any questions.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

cc: K. Roberts, NMED HWB
D. Cobrain, NMED HWB
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S. Yanicak, NMED DOE OB, MS J993
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file: Reading and LANL TA-21 (SWMUs: 21-013(c), 21-024(c), 21-009, 21-012(b), 21-022(f), 21-024(a), 21-024(b), 21-024(d), 21-024(e), 21-024(g), 21-024(h), 21-024(i), 21-024(j), 21-024(k), 21-024(n), 21-024(o), 21-027(a), 21-027(c), CUs: 21-022(h)-99, 21-023(a)-99, 21-024(l)-99, 21-026(a)-99, 21-003-99, and AOC 21-002)b))