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TA21

NEW MEXICO  
ENVIRONMENT DEPARTMENT



*Hazardous Waste Bureau*

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RON CURRY  
Secretary

JON GOLDSTEIN  
Deputy Secretary

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

January 7, 2008

Donald L. Winchell, Jr., Manager  
Los Alamos Site Office-Department of Energy  
528 35<sup>th</sup> Street, Mail Stop A316  
Los Alamos, NM 87544

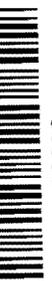
Richard Watkins, Director  
Environment, Safety, Health, & Quality  
Los Alamos National Security, LLC  
Los Alamos Research Park  
4200 Jemez Road, Suite 400  
Los Alamos, NM 87545

**RE: DEMAND FOR PAYMENT  
STIPULATED PENALTY FOR THE 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:

This letter constitutes written notice of the New Mexico Environment Department's (NMED) demand for payment of stipulated penalties pursuant to Section III.G of the March 1, 2005 Order on Consent (Order). This notice is for the Department of Energy (DOE) and the Los Alamos National Security, LLC's (the Respondents) failure to substantially comply with the requirements set forth in the approved *Delta Prime Site Aggregate Area Investigation Work Plan* and the Order as documented in the Respondents' *Delta Prime Site Aggregate Area Investigation Report* (Investigation Report), dated November 7, 2007.

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



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accessibility. NMED agrees, and recognizes that the Respondents' failure to substantially comply with the terms of the Order and the approved work plan may well have been out of the control of Los Alamos National Laboratory personnel. The NMED must nevertheless hold the Respondents – as signatories to the Order – to their cleanup commitments.

On November 20, 2007, the Department issued written notice of its intent to assess stipulated penalties and reaffirmed its intent in a letter dated December 18, 2007. In accordance with Section III.G.3 of the Order, the Respondents shall pay \$1,000 per day for the first thirty (30) days of noncompliance, and \$3,000 per day thereafter. This demand for payment is for the first 60 days of noncompliance (November 8, 2007 through January 6, 2008). Therefore, in accordance with Section III.G.5, \$120,000.00 is due to the Department within 45 days of the date of this letter.

The Respondents must follow the procedures for payment outlined in Section III.G.5 of the Order. In accordance with Section III.G.6 of the Order interest shall accrue at the rate specified in 28 U.S.C. § 1961. Interest shall accrue from the date the penalty is due until the date it is actually paid.

Should you have any questions, please contact Kathryn Roberts at 476-6041.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

cc: K. Roberts, NMED HWB  
D. Cobrain, NMED HWB  
A. Vollmer, NMED HWB  
S. Yanicak, NMED DOE OB, MS J993  
L. King, EPA 6PD-N  
G. Rael, DOE OLASO, MS A316  
S. Stiger, LANL ADEP, MS J591

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))