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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 20, 2008

David Gregory
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David McInroy
Remediation Services Deputy Project Director
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**RE: NMED COMMENTS ON THE RESPONSE TO THE APPROVAL WITH
MODIFICATIONS, PHASE II INVESTIGATION REPORT, MATERIAL
DISPOSAL AREA (MDA) T AT TECHNICAL AREA (TA) 21, REVISION
1.0 (MARCH 28, 2008) SEPTEMBER 5, 2008
LOS ALAMOS NATIONAL LABORATORY
EPA ID #NM0890010515
HWB-LANL-08-005**

Dear Messrs. Gregory and McInroy:

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) *Response to the "Approval with Modifications, Phase II Investigation Report, Material Disposal Area (MDA) T at Technical Area (TA) 21, Revision 1.0 (March 28, 2008),"* dated September 5, 2008 (Response) and referenced by LA-UR-08-5746/EP2008-0410. NMED has reviewed the Permittees' response and provides the following comments.

In the Permittees' November 2007 *Phase II Investigation Report for MDA-T at TA-21* (referenced by LA-UR-07-7692), the Permittees stated in Section 3.6 (*Deviations*) that the newly drilled boreholes 21-603058 and 21-603059 replaced boreholes 21-25262 and 21-25263. Comment #12 of NMED's February 8, 2008 *Notice of Disapproval (NOD)*



explained that the Administrative Record shows no evidence that the Nuclear Environmental Site (NES) boundary at MDA-T precluded the Permittees from collecting samples at the relevant boreholes. The Permittees were directed to “remove the slough from boreholes 21-25262 and 21-25263, as previously directed...and conduct vapor monitoring for VOCs and tritium at boreholes 21-25262, 21-25263, 21-25264, 21-603058 and 21-603059.”

In a February 22, 2008 meeting between representatives of NMED and the Permittees that the Permittees reference in the Response, the Permittees were instructed to provide, in the revised Report, documentation to explain the borehole deviation which was a result of the Permittees’ assessment of MDA-T as a nuclear facility and not a nuclear environmental site. The Permittees’ February 29, 2008 “*Response to the NOD for the Phase II Investigation Report for MDA-T at TA-21 (LA-UR-08-1216/EP2008-0101)*” failed to provide such documentation. In response, NMED stated in the March 28, 2008 *Approval with Modifications Phase II Investigation Report, MDA-T at TA-21* in comment #3:

The Permittees failed to provide in the revised Report documentation (e.g., a Document Safety Analysis or an equivalent reference) to explain how and why the status of the work area at MDA-T changed from designation as a nuclear environmental site to a nuclear facility. NMED explicitly stated in the February 22, 2008 meeting with LANS contractor Kevin Reid and Bruce Wedgeworth of your staff that specific documentation must be submitted to explain the new designation and to justify the Permittees’ need to install substitute investigation boreholes 21-603058 and 21-603059. Since the Permittees did not adequately justify the need for the deviation, the Permittees must collect pore-gas samples from all five borehole locations (21-25262, 21-25263, 21-25264, 21-603058, and 21-603059) for the remainder of the quarterly sampling events.

NMED extended the Permittees original quarterly sampling schedule due to the above direction; the NMED March 28, 2008 *Approval with Modifications* stated:

NMED acknowledges that the Permittees will have to submit a Safety Basis report for the required work. In order to provide for enough time for this process, NMED will allow the Permittees to deviate from the original monitoring requirements included in the October 2007 *Subsurface Vapor-Monitoring Plan for MDA-T at TA-21 (LA-UR-07-7037/EP2007-0658)* which states, “Samples will be collected on a quarterly basis for one year beginning on October 2007” (page 2). Instead of the schedule proposed in the October 2007 Work Plan, the Permittees must conduct quarterly sampling on the following time schedule:

Quarterly Event	Date
2	June 2008
3	September 2008
4	December 2008

This provides the Permittees ample time to fulfill Facility requirements prior to collection of the required samples at MDA-T. The final monitoring report is due within 45 days of completion of the final sampling event.

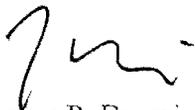
NMED considers the Permittees' assertion that boreholes 21-25262 and 21-25263 cannot be utilized due to MDA-T's characterization as a nuclear facility to be contradictory and unsubstantiated. The Permittees' November 2007 "*Phase II Investigation Report for MDA-T at TA-21*" and February 2008 "*Phase II Investigation Report for MDA-T at TA-21, Revision 1.0*" state that access to this borehole was not possible due to safety issues. However, the Permittees' September 5, 2008 submittal proposes to utilize borehole 21-25262. Further, NMED's January 16, 2007 *Notice of Approval with Direction for MDA-T Phase I Investigation Report* stated in specific comment # 3, "NMED does not consider sloughing to be an acceptable rationale for not collecting a pore gas sample at total depth (TD) of the boring." The Department required the Permittees in required action #3 to remove the slough from the borehole and collect pore-gas samples from the TD. In NMED's April 9, 2007 *Approval with Modifications of MDA-T Phase II Investigation Work Plan*, NMED again instructed the Permittees in comment #2 to "remove the slough from the boreholes and collect pore-gas samples from the TD...the samples must be analyzed for tritium and VOCs and included in the Phase II IR." The Permittees concurred in their June 22, 2007 "*Submittal of the Response to the Approval with Modifications, Phase II IWP*" (LA-UR-07-3844) that, "...permanent vapor-monitoring wells are needed at MDA-T as part of the monitoring requirements...Accordingly, LANL agrees to remove the slough and install three permanent vapor-monitoring wells in the three deepest boreholes (sample locations 21-25262, 21-25263, and 21-25264)" (see the Permittees' response to NMED comment #2 (required action #3)).

The Permittees must collect pore-gas samples from all five borehole locations (21-25262, 21-25263, 21-25264, 21-603058, and 21-603059) for each of the quarterly sampling events as outlined in the March 28, 2008 *Approval with Modifications*. This must include the removal of the slough from boreholes 21-25262 and 21-25263, as previously required by NMED (see NMED January 16, 2007 *Notice of Approval with Direction*; NMED April 9, 2007 *Approval with Modifications*; NMED February 8, 2008 *Notice of Disapproval*; and March 28, 2008 *Approval with Modifications*).

Messrs. Gregory & McInroy
October 20, 2008
Page 4

The Permittees are required to meet their corrective action obligations at MDA-T and to comply with the Consent Order. Please contact Rebecca Kay at (505) 476-6040, should you have any questions.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

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File: Reading and LANL '08, TA-21