



NEW MEXICO  
ENVIRONMENT DEPARTMENT



*Hazardous Waste Bureau*

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 22, 2009

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

Chris Cantwell, Associate Director  
Environment, Safety, Health, & Quality  
Los Alamos National Security, LLC  
P.O. Box 1663, MS K491  
Los Alamos, NM 87545

**RE: FINAL DEMAND FOR PAYMENT  
STIPULATED PENALTY FOR THE PERIODIC MONITORING REPORT FOR  
VAPOR SAMPLING ACTIVITIES AT MATERIAL DISPOSAL AREA T,  
CONSOLIDATED UNIT 21-016(a)-99, AT TECHNICAL AREA 21  
LOS ALAMOS NATIONAL LABORATORY,  
EPA ID #NM0890010515  
HWB-LANL-09-003**

Dear Messrs. Winchell and Cantwell:

This letter constitutes written notice of the New Mexico Environment Department's (the Department) final 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, L.L.C.'s (the Respondents) failure to substantially comply with the requirements set forth in the Order for the *Periodic Monitoring Report for Vapor Sampling Activities at Material Disposal Area T* (Report) because the subject report does not include: 1) four quarters of sampling results for borehole locations 21-25262 and 21-25263; 2) collection of samples from Port #2 at 21-25262 that were intended to substitute for samples to be collected from Port #2 at 21-603059; and 3) the fourth quarter (December 2008) sampling results for the remaining three borehole locations (21-25264, 21-603058, and 21-603059). These deficiencies were outlined in the Department's February 25, 2009, written notice of its intent to assess stipulated penalties.

In accordance with Section III.G.3 of the Order, the Respondents shall pay \$1,000 per day for the

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first thirty (30) days of noncompliance, and \$3,000 per day thereafter. This demand for payment is for the entire number of days (62 days) of noncompliance (February 15 through April 17, 2009). The 62 day period begins with the day after the Report was submitted to the Department (February 15, 2009) and ends with the Respondents' submittal of the *MDA T (21-016(a)-99) Phase III Investigation Work Plan* (April 17, 2009). This is the Department's first and final demand for payment of stipulated penalties for the Report (with the exception of any interest for late payment that may accrue). In accordance with Section III.G.5, \$126,000.00 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 me at 476-6016.

Sincerely,



James P. Bearzi  
Chief  
Hazardous Waste Bureau

cc: K. Roberts, NMED HWB  
D. Cobrain, NMED HWB  
A. Vollmer, NMED HWB  
C. de Saillan, NMED OGC  
S. Yanicak, NMED DOE OB, MS J993  
L. King, EPA 6PD-N  
G. Rael, DOE OLASO, MS A316  
M. Graham, LANL ADEP, MS J591  
file: Reading and LANL '09 TA-21 (SWMU 21-016(a))-99)