

TASY

NEW MEXICO
ENVIRONMENT DEPARTMENT

Hazardous Waste Bureau

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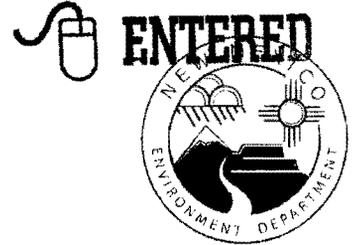
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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

September 18, 2009

Donald L. Winchell, Jr., Manager
Los Alamos Site Office-Department of Energy
528 35th 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: INTENT TO ASSESS STIPULATED PENALTIES, CORRECTIVE MEASURES
EVALUATION REPORT FOR MATERIAL DISPOSAL AREA L, SOLID
WASTE MANAGEMENT UNIT 54-006, AT TECHNICAL AREA 54
LOS ALAMOS NATIONAL LABORATORY,
EPA ID #NM0890010515
HWB-LANL-08-001**

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, L.L.C.'s (LANS) (collectively, the Respondents) *Corrective Measures Evaluation Report for Material Disposal Area L, Solid Waste Management Unit 54-006, at Technical Area 54* (CME Report), referenced by LA-UR-08-0050/EP2007-0356 and dated January 2008. The Department has conducted a preliminary review of the CME Report and finds that it does not substantially comply with the specifications set forth in the March 1, 2005 Order on Consent (Order). This letter constitutes written notification of the Department's intention to assess stipulated penalties pursuant to Section III.G.2 of the Order. The CME Report for MDA L is not in substantial compliance with the Order because it does not include adequate groundwater data in accordance with Section VII.D of the Order.

With approval of the Investigation Report (July 18, 2007), NMED determined that the Permittees have completed characterization of contamination in the vadose zone at MDA L. However, the approval stated that there was uncertainty related to the fate and transport of VOCs and tritium in the subsurface. This uncertainty remains unresolved in large part because the Permittees have not



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completed characterization of groundwater conditions in the vicinity of MDA L nor has the site been fully assessed as a potential source of groundwater contamination. Such uncertainty does not allow NMED to adequately evaluate the proposed remedies for MDA L.

In correspondence dated April 5, 2007, NMED informed the Respondents that there were an insufficient number of wells available for regional groundwater monitoring at TA-54. NMED directed the Respondents to conduct an evaluation of the existing wells and install additional wells in the regional aquifer. The letter stated that “[g]roundwater monitoring beyond reproach is crucial not only to protection of this vital resource, but also to the remedy selection process for the larger solid waste management units the Respondents must address to stay in compliance with the Order.”

In its *Approval with Direction of the Drilling Work Plan for Regional and Intermediate Wells at Technical Area 54*, dated December 7, 2007, the Department stated that “due to delays and mistakes in the well drilling and groundwater monitoring program at Los Alamos National Laboratory, there may not be sufficient time to obtain enough reliable groundwater monitoring data to support a CME at MDAs G, H, and L and still meet the March 1, 2005 Compliance Order on Consent milestones. NMED therefore requires the Respondents to accelerate their well drilling schedule to mitigate at least some of the delays.” The Department required an accelerated well drilling/installation program in order to obtain the groundwater data necessary to properly evaluate CME Reports, including that for MDA L. Specifically, the Department directed the Respondents to install wells R-39 and R-41 at TA-54 by March 31, 2008 and May 31, 2008, respectively and well R-38 by July 31, 2008. Moreover, benzene has been detected in well R-38 and additional characterization of groundwater in the vicinity of MDA L is necessary. Had installation of the wells been completed within the timeframe prescribed by the Department in the approval, the Respondents may have been able to provide adequate groundwater data for inclusion in the CME Report and for evaluation by the Department. To date, such data is not available.

The need for adequate, timely, and technically supportable groundwater data has long been known to the Respondents. This need has been underscored through numerous items of correspondence, including those discussed above, and now culminates with this notification

The Department reserves the right to seek another form of relief, in lieu of assessing stipulated penalties, for all or part of the penalties for noncompliance. If the Department decides to assess stipulated penalties pursuant to Section III.G, the Department will not seek a separate penalty for the deficiency identified in this notice. The Department’s demand for stipulated penalties will be sent in accordance with Section III.G.5 of the Order.

Messrs. Winchell and Watkins
September 18, 2009
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Please contact Kathryn Roberts at 505-476-6041 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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file: Reading and LANL '09 TA-54 (SWMU: 54-006)