

TA 73

State of New Mexico
ENVIRONMENT DEPARTMENT



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RON CURRY
SECRETARY

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

May 3, 2007

Daniel Glenn, Acting Manager
Los Alamos Site Office-Department of Energy
528 35th Street, Mail Stop A316
Los Alamos, NM 87544

Richard S. Watkins, Associate 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 INVESTIGATION REPORT FOR
CORRECTIVE ACTION OF SWMU 73-002 (INCINERATOR ASPHILE
REMOVAL), LOS ALAMOS NATIONAL LABORATORY (LANL),
EPA ID NM0890010515
HWB-LANL-05-005**

Dear Messrs. Glenn and Watkins:

This letter constitutes written notice of the New Mexico Environment Department's (Department) 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 timely submit the *Investigation Report for Corrective Action of SWMU 73-002 and Consolidated Unit 73-002-99* (Investigation Report).

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. On September 13, 2006, the Department issued written notice of its intent to assess stipulated penalties. On October 13, 2006 the Department issued a demand for payment for the first 30 days of noncompliance (September 13, 2006 to October 14, 2006). On December 7, 2006 the Department issued a



12735

Messrs. Glenn and Watkins

May 3, 2007

Page 2

demand for payment for the second 30 days of noncompliance (October 29, 2006 to November 28, 2006).

This demand for payment is for the third 30 days of noncompliance. In letters dated November 14, 2006, December 15, 2006, December 29, 2006, NMED provided written agreement that force

majeure events had occurred and stated that stipulated penalties would not be due for 16 days (October 14, 2006 to October 29, 2006), 14 days (November 29, 2006 to December 12, 2006), and 20 days (December 20, 2006 to January 9, 2007), respectively. On January 12, 2007, NMED issued a notice of agreement that another force majeure event had occurred (work was stopped on January 3, 2007). Due to large accumulations of snow on the slope, the Permittees were required to notify NMED when work could resume safely.

On April 9, 2007, the Permittees notified NMED that work had resumed at the ashpile. However, work was stopped for an additional two days (April 14th and 15th) due to another snowstorm. Therefore, the third 30 days of noncompliance was from December 12, 2006 to December 20, 2006 (8 days), April 9, 2007 to April 13, 2007 (5 days), and April 16 to May 2, 2007 (17 days). In accordance with Section III.G.5, \$90,000.00 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.

As of the date of this letter, the Permittees have paid stipulated penalties for the first and second 30 days of noncompliance. Payment for the first 30 days of noncompliance was received on December 13, 2006 (16 days late). Payment for the second 30 days of noncompliance was received on January 31, 2007 (10 days late). 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.

Messrs. Glenn and Watkins
May 3, 2007
Page 3

If you have any questions regarding this letter, please contact me at (505) 476-6016.

Sincerely,



James P. Bearzi
Chief
Hazardous Waste Bureau

JPB:kmc

cc: K. Chamberlain, NMED HWB
D. Goering, NMED HWB
B. Pippin, NMED HWB
C. de Saillan, OGC
S. Yanicak, NMED DOE OB, MS J993
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A. Phelps, ENV, MS T002
G. Rael, DOE LASO, MS A316
D. Gregory, DOE LASO, MS A316
D. Woitte, LANS, MS A187
L. Cummings, DOE LASO, MS A316
file: Reading and LANL '06 (Permit)