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Date: **SEP 23 2013**

Refer To: EP2013-0213

Ms. Jan Walker

U.S. Environmental Protection Agency, Region 6

Compliance and Assurance Division

Water Enforcement Branch (6EN)

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Dallas, Texas 75202-2733

Ms. Diana McDonald

U.S. Environmental Protection Agency, Region 6

Compliance and Assurance Division

Water Enforcement Branch (6EN)

1445 Ross Avenue, Suite 1200

Dallas, Texas 75202-2733

Subject: NPDES Permit No. NM0030759 – Request for an Extension Due to Force Majeure under Part I.E.4(c) for Sites in Upper Mortandad Canyon

Dear Meses. Walker and McDonald:

The U.S. Department of Energy (DOE) and Los Alamos National Security, LLC (LANS) (the Permittees) are submitting this letter to request approval by Region 6 of the U.S. Environmental Protection Agency (EPA) to extend the deadline for completion of corrective action as a result of force majeure under Part I.E.4 (c) of National Pollutant Discharge Elimination System Permit No. NM0030759 (the Individual Permit). On or before November 1, 2013, the Permittees must certify completion of corrective action under Part I.E.2 of the Individual Permit. For the reasons discussed below, one High Priority Site is eligible to be approved by the New Mexico Environment Department (NMED) and certified for completion of corrective action under the 2005 Compliance Order on Consent (Consent Order). As detailed below, NMED is currently reviewing the information necessary to confirm that the Site is eligible for a certificate of completion (CoC). This extension is necessary to allow the Permittees to meet their obligations under the Individual Permit.

Background

On October 29, 2012, and April 11, 2013, the Permittees met with EPA representatives and discussed the potential that certain High Priority Sites under the Individual Permit may be eligible for approval by NMED for CoCs under the Consent Order. The Consent Order details a process whereby specific solid waste management units (SWMUs) and areas of concern (AOCs) are investigated and the nature and extent of potential contamination is characterized; after site characterization, NMED may require corrective action measures (including potential remediation). At the end of the process, NMED may issue a CoC once it is satisfied the SWMU or AOC poses no potential risk to human health and the environment. The Consent Order process is complex and includes many other requirements such as monitoring, reporting and enforceable deadlines. A copy of the Consent Order is available at

http://www.nmenv.state.nm.us/HWB/documents/LANL_Consent_Order_MODIFIED_4-20-2012.pdf

In 2012, NMED established a technical team (known as the Tiger Team) under the Los Alamos National Laboratory Framework Agreement: Realignment of Environment Priorities (dated January 5, 2012). The Framework Agreement establishes commitments by NMED and DOE/National Nuclear Security Administration to review the characterization efforts undertaken pursuant to the Consent Order, to identify those sites where the nature and extent of contamination have been adequately characterized, and to shift cleanup efforts for those sites. The Supplemental Investigation Report for Upper Mortandad Canyon Aggregate Area, which is the second supplemental investigation report being drafted to support the Tiger Team, will be submitted to NMED by November 29, 2013.

Force Majeure Request

Under Part I.E.2 of the Individual Permit, the Permittees must certify “completion of corrective action” for High Priority Sites by November 1, 2013. The Permittees may certify corrective action as complete if one of several actions occur, including as applicable here: “[t]he Site has achieved RCRA ‘corrective action complete without controls/corrective action complete with controls’ status or a Certificate of Completion under NMED’s Consent Order” [see Part I.E.2(d)]. Under Part I.E.4(c), EPA may approve an extension to a deadline if the Permittees can demonstrate a force majeure has resulted, or will result, in a delay in meeting the obligation to complete corrective action. Force majeure includes, among other things, “the inability to obtain the necessary authorizations, approvals, permits or licenses *due to an action or inaction by another governmental authority*” (emphasis added). To obtain an extension, the Permittees must describe (1) the cause or causes of the delay; (2) the expected duration of the delay, including any obligations that would be affected; (3) the actions taken or to be taken by the Permittees to minimize the delay; and (4) the timetable by which those actions are expected to be implemented.

1. The Cause or Causes of the Delay

Under the Consent Order, the investigations of certain Individual Permit Sites have progressed to the point where they are eligible to receive a CoC by NMED, thereby demonstrating that the Site(s) no longer poses a potential risk to human health and the environment. Under Part I.E.2(d), the Permittees may certify completion of corrective action through issuance of the CoC. The Permittees will submit the Supplemental Investigation Report for Upper Mortandad Canyon Aggregate Area to NMED by November 29, 2013. This report will include High Priority Site 50-006(a) in T-SMA-1.

Storm water monitoring samples collected in 2011 from T-SMA-1 showed detections of copper, zinc, and total polychlorinated biphenyls (PCBs) at concentrations above the applicable target action levels (TALs). Based on site history and previous sampling results, the Site is not the source of the copper, zinc, or PCB TAL exceedances. Although the Supplemental Investigation Report for Upper Mortandad Canyon Aggregate Area will not be submitted to NMED until the end of November, the Permittees have already carefully evaluated the soil data from Site 50-006(a) and have verified that all detected constituents in the soil samples collected in 2009 as part of the Upper Mortandad Canyon Aggregate Area investigation were below the applicable residential site screening levels or screening action levels.

Based upon a review of all available data, this Site will be eligible for a CoC without controls under the Consent Order upon NMED approval of the Supplemental Investigation Report for Upper Mortandad Canyon Aggregate Area. The Permittees, however, are unable to certify completion of corrective action to meet the November 1, 2013, deadline because the supplemental investigation report will not be submitted until the end of November, and NMED will require time to review the report.

2. Expected Duration of the Delay, Including Affected Obligations

NMED is aware that the Permittees have requested an extension of the November 1, 2013, milestone based on force majeure, and the upcoming submittal of the Supplemental Investigation Report for Upper Mortandad Canyon Aggregate Area. The Permittees anticipate that NMED will complete its review of the supplemental report within 6 months of submittal. If NMED determines that its review process will extend beyond the end of May 2014, the Permittees will submit a request to NMED to review this Site separately to facilitate the prompt issuance of the CoC.

If EPA grants this force majeure, the delayed milestone will not adversely impact the environment because based on site history and previous sampling results, these Sites are unlikely source of the constituents that exceeded TALs in storm water, and the Permittees will continue to inspect and maintain existing baseline control measures and enhanced controls.

3. Actions Taken (or to Be) to Minimize the Delay

NMED will have all the necessary information and documents to process the supplemental report and CoC when the Supplemental Investigation Report or Upper Mortandad Aggregate Area is submitted at the end of November. The Permittees will work diligently with NMED to address any outstanding issues or questions as necessary to obtain the CoC in a timely manner and will submit the CoC to EPA promptly when it is received from NMED or will inform EPA of any changes in the review schedule.

4. The Timetable by Which Those Actions Are Expected to Be Implemented

The Permittees have begun to draft the Supplemental Investigation Report for Upper Mortandad Canyon Aggregate Area. Although the supplemental report for will not be submitted to NMED until the end of November, the Permittees have already carefully evaluated the history and soil data from Site 50-006(a) and have verified the Site is not the source of the constituents that exceeded TALs in storm water. Site 50-006(a) was identified as a SWMU because it was impacted by two accidental operational releases of untreated radioactive liquid waste (RLW) in 1974. In 1981, the RLW lines that were the source of these accidental discharges were removed, impacted soil around the outfall was excavated, and the area was backfilled with clean fill. This same area was investigated in 1993 during the Phase I Resource Conservation and Recovery Act facility investigation and again in 2009 as part of the Upper Mortandad Canyon Aggregate Area investigation. As documented in the Upper Mortandad Canyon Aggregate Area Investigation Report, all detected chemicals and radionuclides were below residential soil screening levels and screening action levels.

The Permittees will update EPA when the supplemental investigation report is submitted to NMED and will provide EPA with an electronic copy of the report. Once the report is submitted and approved by NMED, the Permittees will work diligently with NMED to obtain the CoC in a timely manner and will submit a corrective action certification to EPA promptly upon receipt of the CoC from NMED.

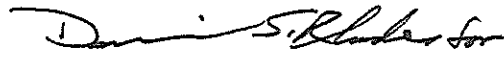
If you have any questions, please contact Steve Veenis at (505) 667-0013 (veenis@lanl.gov) or David Rhodes at (505) 665-5325 (david.rhodes@nnsa.doe.gov).

Sincerely,



Jeff Mousseau, Associate Director
Environmental Programs
Los Alamos National Laboratory

Sincerely,



Peter Maggiore, Assistant Manager
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JM/PM/CD/SV/KL:sm

- Cy: Isaac Chen, EPA Region 6, Dallas, TX (date-stamp emailed)
- Renee Ryland, EPA Region 6, Dallas, TX (date-stamp emailed)
- John Kieling, NMED-HWB, Santa Fe, NM (date-stamp emailed)
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- Tori George, EP-REG (date-stamp emailed)
- Steve Veenis, EP-CAP (date-stamp emailed)
- Dave McInroy, EP-CAP (date-stamp emailed)
- Jeff Mousseau, ADEP (date-stamp emailed)
- Wendy Staples, EP-REG (date-stamp emailed)
- RPF (electronic copy)