



Environmental Programs

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Date: SEP 23 2013

Refer To: EP2013-0212

Ms. Jan Walker
U.S. Environmental Protection Agency, Region 6
Compliance and Assurance Division
Water Enforcement Branch (6EN)
1445 Ross Avenue, Suite 1200
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 Sandia Canyon

Dear Mses. 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 IP. For the reasons discussed below, five High Priority Sites are 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 these five Sites are eligible for certificates of completion (CoCs). 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 possibility that some 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 first supplemental investigation report developed to support the Tiger Team, the Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area, was submitted to NMED on August 27, 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. On August 27, 2013, the Permittees submitted to NMED a Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area that included the following five Sites:

- **Site 03-029 in S-SMA-1.1:** Storm water monitoring samples collected in 2011 from S SMA-1.1 showed copper, gross alpha, 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 an unlikely source of the copper, gross alpha, or PCB TAL exceedances.
- **Site 03-012(b) in S-SMA-2.0:** Storm water monitoring samples collected in 2011 from S-SMA-2.0 showed detections of copper, zinc, and total PCBs at concentrations above the applicable TALs. Based on site history and previous sampling results, the Site is an unlikely source of the copper, zinc, or PCB TAL exceedances.

- **Site 03-052(b) in S-SMA-2.01:** Storm water monitoring samples collected in 2011 from S-SMA-2.01 showed detections of copper and total PCBs at concentrations above the applicable TALs. Based on site history and previous sampling results, the Site is an unlikely source of the copper or PCB TAL exceedances.
- **Site 03-014(b2) in S-SMA-3.53:** Storm water monitoring samples collected in 2011 from S-SMA-3.53 showed detections of copper, zinc, aluminum, gross alpha, and total PCBs at concentrations above the applicable TALs. Based on site history and previous sampling results, the Site is an unlikely source of the copper, zinc, aluminum, gross alpha, or PCB TAL exceedances.
- **Site 60-007(b) in S-SMA-3.6:** Storm water monitoring samples collected in 2011 from S-SMA-3.6 showed detections of copper, zinc, and total PCBs at concentrations above the applicable TALs. Based on site history and previous sampling results, the Site is an unlikely source of the copper, zinc, or PCB TAL exceedances.

As summarized above, the extensive soil data collected pursuant to the Consent Order for these Sites demonstrate there is no evidence the constituents that exceeded TALs were managed, handled, or disposed of at these Sites. Therefore, these constituents are not significant industrial materials that could potentially discharge to storm water. All five of these Sites are eligible to receive a CoC under the Consent Order upon NMED approval of the Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area. A CD containing this report is enclosed. The Permittees, however, are unable to certify completion of corrective action to meet the November 1, 2013, deadline because it is unlikely NMED can approve the Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area and process DOE/LANS's subsequent requests for CoCs before this deadline.

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 submittal of the Supplemental Investigation Report for Upper Sandia 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 February 2014, the Permittees will submit a request to NMED to review these Sites separately to facilitate the prompt issuance of CoCs.

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 has all of the necessary information and documents to process the supplemental report and CoCs. The Permittees will work diligently with NMED to address any outstanding issues or questions as necessary to obtain these CoCs in a timely manner and will submit the CoCs to EPA promptly when they are 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*

At the present time, no actions are required by Permittees to obtain NMED approval. In the event any such actions are required, the Permittees will work expeditiously and diligently to provide NMED any further information or documentation requested.

For the reasons stated above, the Permittees respectfully request that EPA approve this request for an extension based on force majeure as necessary to enable the facility to obtain NMED approval of the Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area. The Permittees will continue to maintain all baseline and enhanced control measures during the extension if EPA grants this force majeure request.

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
Environmental Projects Office
Los Alamos Field Office

JM/PM/CD/SV/KL:sm

Attachment: Electronic files – Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area (LA-UR-13-26024)

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)
James Hogan, NMED-SWQB, Santa Fe, NM (date-stamp emailed)
Bruce Yurdin, NMED-SWQB, Santa Fe, NM (date-stamp emailed)
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Kate Lynnes, EP-REG (date-stamp emailed)
Tori George, EP-REG (date-stamp emailed)
Steve Veenis, EP-CAP (date-stamp emailed)
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Jeff Mousseau, ADEP (date-stamp emailed)
Wendy Staples, EP-REG (date-stamp emailed)
RPF (electronic copy)