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**Associate Director for ESH**  
Environment, Safety, and Health  
P.O. Box 1663, MS K491  
Los Alamos, New Mexico 87545  
505-667-4218/Fax 505-665-3811

**Environmental Management**  
Los Alamos Field Office, MS A316  
3747 West Jemez Road  
Los Alamos, New Mexico 87544  
(505) 665-5658/FAX (505) 606-2132

Date: SEP 10 2015

Refer To: ADESH-15-109

LAUR: 15-26390

Locates Action No.: N/A

Brent Larsen, Chief  
Water Quality Protection Division  
Permits and Technical Assistance Section (6WQ-PP)  
US Environmental Protection Agency, Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733

**Subject: NPDES Permit No. NM0030759 – Request for an Extension Based on Force Majeure under Part I.E.4(c) for Site 03-052(f) within S-SMA-0.25 in Upper Sandia Canyon**

Dear Mr. Larsen:

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 to complete 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 October 31, 2015, the Permittees must certify completion of corrective action for Site 03-052(f) under Part I.E.2 of the Individual Permit. For the reasons discussed below, this 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 this 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 representatives of EPA to discuss the possibility that some Sites under the Individual Permit may be eligible for approval by NMED for CoCs under the Consent Order. The Consent Order details a corrective action process whereby specific solid waste management units (SWMUs) and areas of concern (AOCs) are investigated, the nature and extent of potential contamination is characterized, and the potential risk to human health

and the environment is evaluated. After site characterization, NMED may require additional corrective action measures (including potential remediation) or may determine that no further action is required. At the end of the corrective action process, NMED may issue a CoC once it is satisfied the SWMU or AOC poses no potential risk to human health and the environment. To obtain a CoC for a SWMU or AOC, the Permittees must submit a report to NMED that presents the results of site characterization, demonstrates that nature and extent of potential contamination are defined, demonstrates no unacceptable risk to human health or the environment, and recommends corrective action complete status. Upon approval of the report by NMED, the Permittees may request a CoC. 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](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 and to identify those sites where the nature and extent of contamination have been adequately characterized. To support these efforts, the Permittees began preparing supplemental investigation reports (SIRs) to identify those sites that had been adequately characterized and that required no further actions under the Consent Order. The first SIR developed to support the Tiger Team, the Supplemental Investigation Report for Upper Sandia Canyon Aggregate Area, was submitted to NMED on August 27, 2013. A notice of disapproval was received from NMED on April 14, 2015, requiring the Permittees to respond to comments and provide a revised SIR by September 14, 2015.

Site 03-052(f) is included in site monitoring area (SMA) S-SMA-0.25. Baseline confirmation storm water samples were collected from S-SMA-0.25 on July 28 and August 15, 2011, indicating exceedances of target action levels (TALs) for copper, zinc, gross-alpha radioactivity, and polychlorinated biphenyls (PCBs). On April 30, 2013, the Permittees submitted the Alternative Compliance Request for S-SMA-0.25 (LA-UR-13-22842) to EPA Region 6. The request for alternative compliance was based on a determination by the Permittees that Site 03-052(f) could achieve completion of corrective action only through the alternative compliance process in Part I.E.3 of the Individual Permit. In a letter issued on March 27, 2014, EPA denied the alternative compliance request, and established a new compliance deadline of October 31, 2015. Corrective action confirmation storm water samples collected at S-SMA-0.25 on July 15 and August 22, 2014, exceeded TALs for copper, zinc, and PCBs.

Following EPA's denial of the alternative compliance request, the Permittees determined that based on progress in implementing the framework agreement process, agreed to by DOE and NMED, compliance for Site 03-052(f) could be achieved by obtaining a CoC. Site 03-052(f) is included in the SIR for Upper Sandia Canyon Aggregate Area. The SIR concludes that the nature and extent of contamination are defined for Site 03-052(f) and the Site poses no unacceptable risk to human health and the environment under current and reasonably foreseeable land use. Based on these conclusions, the SIR recommends corrective action complete status for Site 03-052(f).

## **Force Majeure Request**

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 conditions, “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.

As allowed under Section E.2(d), through the submittal of the SIR for the Upper Sandia Aggregate Area in August 2013, the Permittees are pursuing a CoC to complete corrective action for Site 03-052(f). In April 2015, NMED issued a notice of disapproval for the SIR, requiring the Permittees to respond to comments and to submit a revised SIR no later than September 14, 2015. The Permittees cannot certify completion of corrective action under the Individual Permit until CoCs have been received from NMED, and a CoC request for Site 03-052(f) has been delayed pending NMED’s approval of the SIR. The Permittees do not anticipate approval of the revised SIR by the compliance deadline of October 31, 2015, stipulated by EPA.

### ***1. The Cause or Causes of the Delay***

On August 27, 2013, the Permittees submitted to NMED the SIR for Upper Sandia Canyon Aggregate Area and recommended Site 03-052(f) for corrective action complete status. NMED reviewed the SIR, issued a notice of disapproval with comments on April 14, 2015 and required a response to the comments with a revised SIR by September 14, 2015. In accordance with Section III.M.2 of the Consent Order, NMED may approve the revised SIR after review of the Permittee’s responses and revisions. Based on NMED’s comments, the Permittees do not expect revisions to the SIR to affect the original conclusions and recommendations for Site 03-052(f). Request for and receipt of the CoC, however, will depend on NMED’s review and approval of the revised SIR. Based on past experience with other large Consent Order documents, the Permittees do not expect this approval to occur before the October 31, 2015 Individual Permit compliance deadline.

### ***2. Expected Duration of the Delay, Including Affected Obligations***

The revised SIR will be submitted to NMED on or before September 14, 2015. The Permittees anticipate NMED will complete its review of the supplemental report within 6 months of submittal. If NMED determines its review process will extend beyond the end of March 2016, the Permittees will submit a request to NMED to review Site 03-52(f) separately to facilitate the prompt issuance of the CoC.

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

When submitting comment responses and the revised SIR, the Permittees intend to provide NMED with all of the necessary information to approve the supplemental report. If during preparation of this response the Permittees identify issues that could delay approval, the Permittees will work diligently with NMED to resolve such issues before submitting the revised SIR. Upon approval of the SIR, the Permittees will submit the CoC request to NMED in a timely manner and promptly submit the CoC to EPA when it is received from NMED.

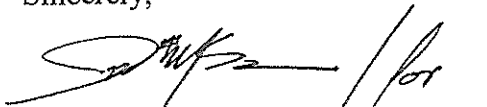
### **4. The Timetable by which Those Actions Are Expected to Be Implemented**

At the present time, the Permittees must submit the revised Upper Sandia Canyon Aggregate Area SIR to NMED on or before September 14, 2015, to obtain NMED approval. In the event any additional actions are required by NMED, 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 SIR for Upper Sandia Canyon Aggregate Area. The Permittees will continue to maintain all baseline and enhanced control measures at S-SMA-0.25 during the extension period if EPA grants this force majeure request.


If you have any questions, please contact Terrill Lemke at (505) 665-2397 (tlemke@lanl.gov) or David Rhodes at (505) 665-5325 (david.rhodes@em.doe.gov).

Sincerely,



Alison M. Dorries, Division Leader  
Environmental Protection Division  
Los Alamos National Laboratory

Sincerely,



Christine Gelles, Acting Manager  
Environmental Management  
Los Alamos Field Office

AD/CG/BR/SV/TL:sm

Cy: Isaac Chen, EPA Region 6, Dallas, TX  
James Hogan, NMED-SWQB, Santa Fe, NM  
emla.docs@em.doe.gov, MS A316  
lasomailbox@nnsa.doe.gov  
Christine Gelles, DOE-EM-LA  
David Rhodes, DOE-EM-LA  
Karen Armijo, DOE-EM-LA  
Annette Russell, DOE-EM-LA  
Kimberly Davis Lebak, DOE-LASO-OOM  
Thaddeus Kostrubala, ES-EPD  
Steve Veenis, ADEP ER Program  
Bruce Robinson, ADEP ER Program

Cy continued:

Peter Maggiore, DOE-NA-LA

Terrill Lemke, ADESH-ENV-CP

Alison Dorries, ADESH-ENV-DO

Michael Brandt, ADESH

Amy De Palma, PADOPS

Craig Leasure, PADOPS

Susan McMichael, LC-ESH

PRS Database

Public Reading Room (EPRR)

ADESH Records