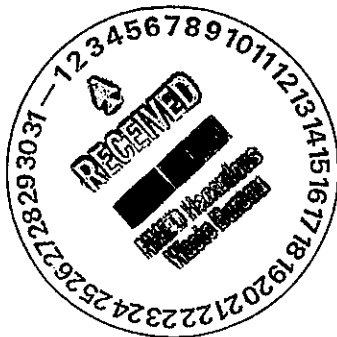




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Date: **JUL 01 2010**
Refer To: EP2010-0310

James Bearzi, Bureau Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Subject: Fiscal Year 2011 Stipulated Penalties Document List

Dear Mr. Bearzi:

On June 17, 2010, you sent via email a Federal Fiscal Year 2011 Stipulated Penalties Document List (Proposed List) that the New Mexico Environment Department (NMED) proposed as subject to the stipulated penalty provisions of Section III.G of the March 2005 Compliance Order on Consent (the Consent Order). The U.S. Department of Energy (DOE)/National Nuclear Security Agency and Los Alamos National Security, LLC (LANS) have reviewed this list. On June 29, 2010, DOE/LANS met with you and your staff to discuss our concerns with several proposed documents and due dates. As discussed, we are providing this letter to document those concerns and provide suggested revisions to the Proposed List.

As discussed at the June 29, 2010, meeting DOE/LANS remain committed to meeting Consent Order deliverables. However, we have serious concerns with the following four documents in the Proposed List.

Material Disposal Area T Remedy Completion Report

The June 17, 2010, NMED Proposed List includes the Remedy Completion Report (RCR) for Material Disposal Area (MDA) T, with a due date of December 19, 2010. This due date cannot be achieved because of the time necessary to install new additional well(s), collect representative groundwater data from these wells, and complete the remedy selection and implementation process specified in the Consent Order.

DOE/LANS submitted an extension request for the December 19, 2010, RCR to NMED on April 27, 2010. This extension was submitted in response to an email from NMED suggesting we seek an extension for the RCR. The DOE/LANS RCR extension request provided a planning schedule and the rationale for each step in the process culminating in the submittal of the RCR on

August 15, 2015. A key factor in the development of this schedule was the fact that the upcoming "Technical Area 21 [TA-21] Groundwater and Vadose-Zone Monitoring Well Network Evaluation and Recommendations" report (the TA-21 Network Evaluation), which will be submitted to NMED on July 2, 2010, will propose additional well(s) to define the nature and extent of any potential groundwater contamination from MDA T. The installation of these well(s) was incorporated into the proposed schedule as well as the collection and analysis of four quarters of data from the new wells prior to completion of the corrective measures evaluation (CME).

NMED denied DOE/LANS's request on May 5, 2010. The denial letter alleged that the extension request did not provide sufficient detail to support the extension. NMED stated that DOE/LANS could begin evaluating the range of remedial alternatives for MDA T and developing the CME report concurrently with the installation of the new well(s). In its May 5, 2010 letter, NMED stated, "[b]ased on this scenario, the Permittees would submit the CME report for MDA T no later than **June 12, 2012**, which would make reasonable the submittal of the Corrective Measures Implementation Plan by **June 12, 2013**." Further, while NMED denied the DOE/LANS extension request for the MDA T RCR, it stated "[s]hould Permittees choose to resubmit a request for an extension, NMED recommends that the Permittees propose a schedule which comports with NMED's suggested schedule herein."

The submittal of an RCR comes well after the corrective measures implementation plan. Therefore, it is clear that while DOE/LANS and NMED may not have agreement on what is a reasonable schedule for the remaining MDA T corrective action, both DOE/LANS and NMED understand the December 19, 2010, RCR date set forth in the Proposed List is not reasonable or achievable.

There is a further rationale for how the inclusion of the MDA T RCR in the fiscal year (FY) 2011 Stipulated Penalties Document List is not appropriate. This is based on the timing of the next upcoming NMED required MDA T related document—the TA-21 Network Evaluation, which has an NMED-imposed due date of July 2, 2010.

Submission of an RCR requires a number of predecessor activities that follow the TA-21 Network Evaluation. Some of these activities (CME Report, Statement of Basis, Public Comment, etc.) may require second and third revisions before they are finalized, which could have a "ripple" affect on subsequent activities. Completion of these activities requires substantially more time than the current RCR due date of December 19, 2010.

Therefore, DOE/LANS propose removing the remedy completion report for MDA T from the FY2011 Stipulated Penalties Document List. As has been discussed previously with NMED, DOE/LANS will submit a revised extension request to NMED after the NMED has received the July 2, 2010, TA-21 groundwater network evaluation report.

MDA L Corrective Measures Evaluation Report, Revision 1

The NMED June 17, 2010, Proposed List includes the MDA L CME, Revision 1, with a due date of October 1, 2010. While the recently required due date is achievable, the report cannot include the four quarters of groundwater data required from all seven of the NMED-specified wells by that date.

DOE/LANS submitted the CME for MDA L on January 18, 2008. On June 2, 2008, NMED provided a Notice of Disapproval (NOD) for this document. On May 17, 2010, NMED provided specific written comments on the CME, also in the form of a NOD. The May 17, 2010 NOD required that "Permittees must address all comments herein and submit a revised CME report by October 1, 2010."

General Comment 5 of the May 17, 2010, NOD specifically requires "four quarters of groundwater data at a minimum from each well (currently R-21, R-38, R-32, R-53, R-54, R-56, and R-57)" to be provided in the revised CME. The collection of four quarters of data is not possible for some of the wells that were specified by NMED, as these wells will not have been in existence for that length of time by the October 1, 2010 due date.

DOE/LANS have made significant efforts to install regional groundwater wells over the last few years. These wells include four wells associated with MDA L that are complete or nearing completion. These additional wells were drilled under the schedule provided to NMED in our October 14, 2009, letter regarding "Proposed Integrated Well-Installation Schedule" (EP2009-0496) and subsequent correspondence regarding schedules.

The groundwater data for these wells that will be available by October 1, 2010, are listed in the table below:

NMED Specified Well	Number of Quarters of Data Available for October 1, 2010 MDA L CME
R-21	4 or more quarters
R-38	4 or more quarters
R-32	4 or more quarters
R-53	3 quarters
R-54	3 quarters
R-56	1 quarter
R-57	1 quarter

Therefore, we request that NMED provide clarification of the requirements for the submittal of groundwater data set forth in General Comment 5 of the May 17, 2010, NOD. Specifically, DOE/LANS request written concurrence that when we submit the MDA L CME report with the groundwater data specified above, NMED will not deem the CME to be substantially noncompliant with respect to the amount of groundwater data within the CME.

DOE/LANS propose that if NMED retains this document in the final FY2011 Stipulated Penalty List with the current schedule that this concurrence be included in NMED's letter transmitting the FY2011 Stipulated Penalties List.

Alternatively, if NMED does not concur with this approach, we propose that the due date be extended to allow DOE/LANS to meet the NMED's NOD requirement to collect four quarters of groundwater data from the NMED specified wells.

The NMED June 17, 2010, proposed list includes the RCR for MDA L, with a due date of July 9, 2011. This due date is inconsistent with the remedy selection and implementation processes specified in the Consent Order, and cannot be achieved.

As discussed above, DOE/LANS are prepared to submit a revised CME on October 1, 2010, although without four quarters of data for all NMED specified wells. However, submission of an RCR requires a number of predecessor activities that follow the CME. Some of these activities (CME Report, Statement of Basis, Public Comment, etc.) may require second and third revisions before they are finalized, which could have a "ripple" affect on subsequent activities. Completion of these activities requires substantially more time the current RCR due date of July 9, 2011.

Therefore, DOE/LANS propose that the RCR for MDA L be removed from the proposed FY2011 Stipulated Penalties Document List. DOE/LANS will submit an extension request beyond FY2011 under separate cover.

MDA H CME Report

The NMED June 17, 2010 proposed list includes the MDA H CME, Revision 1, with a due date of December 31, 2010. While the recently required due date is achievable, the report cannot include the four quarters of groundwater data for all of wells associated with MDA H by that date.

DOE/LANS conducted a corrective measures study (CMS) for MDA H and submitted the CMS to NMED in June 2005. On November 5, 2007, NMED issued a public notice for proposed selection of remedies. A number of public comments were made, including comments from DOE/LANS. On June 16, 2010, NMED withdrew the selected remedies and directed DOE/LANS to submit a CME to replace the June 2005 CMS.

The June 16, 2010, letter specifically directs that the "Permittees must use all available data from subsurface vapor phase sampling and groundwater monitoring when evaluating corrective measure alternatives." DOE/LANS will meet this requirement and submit all available data—including all available groundwater data. However, the collection of four quarters of data is not possible for one of the wells (R-52) associated with MDA H, as this well will not have been in existence for that length of time by the December 31, 2010, due date.

The groundwater data for these wells that will be available by December 31, 2010, are as follows:

Well Associated with MDA H	Number of Quarters of Data Available for December 31, 2010 MDA H CME
R-20	4 or more quarters
R-37	4 or more quarters
R-40	4 or more quarters
R-51	4 quarters
R-52	3 quarters


Therefore, we request that NMED provide clarification of requirements for the submittal of groundwater data set out in the June 16, 2010, withdrawal letter. Specifically, we request written concurrence that when DOE/LANS submit the MDA H CME with the groundwater data specified above, NMED will not deem the CME to be substantially noncompliant with respect to the amount of groundwater data within the CME.

DOE/LANS propose that if NMED retains this document in the final FY2011 Stipulated Penalty List with the current schedule, that this concurrence be included in NMED's letter transmitting the FY2011 Stipulated Penalties List.

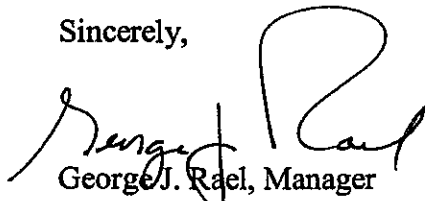
Alternatively, if NMED does not concur with this approach, we propose that the due date be extended to allow DOE/LANS to collect four quarters of groundwater data from the NMED specified wells.

We appreciate the opportunity to have discussed these issues with you on June 29, 2010. If you have any questions or would like to further confer on the FY2011 Stipulated Penalties Document List, we are available to meet with you at your convenience

Sincerely,


Michael J. Graham, Associate Director
Environmental Programs
Los Alamos National Laboratory

Sincerely,


George J. Rael, Manager
Environmental Projects Office
Los Alamos Site Office

MG/GR/TG/LN:vt

Cy: Laurie King, EPA Region 6, Dallas, TX
Tom Skibitski, NMED-OB, Santa Fe, NM
Steve Yanicak, NMED-DOE-OB, MS M894
David Rhodes, DOE-LASO (date-stamped letter emailed)
Ed Worth, DOE-LASO, MS A316
Dan Cox, ADEP MS M991
Bruce Schappell, ADEP, MS C348
Tori George, REG-DO, MS M991
Jarrett Rice, PMFS-DO, MS C349
Bruce Wedgeworth, PMFS-DO, MS C349
Kristine Smeltz, EP-BPS-DO, MS M992
RPF, MS M707
IRM-RMMSO, MS A150 (date-stamped letter emailed)