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Date: **OCT 30 2015**

Refer To: ADESH-15-140

LAUR: N/A

Locates Action No.: N/A

Brent Larsen, Chief
Water Quality Protection Division (6WQ)
Permits and Technical Assistance Section
U.S. 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 Eighteen Sites within Ten Site Monitoring Areas

Dear Mr. Larsen:

The U.S. Department of Energy (DOE) and Los Alamos National Security, LLC (LANS) (hereafter, the Permittees) are submitting this letter to request approval by the U.S. Environmental Protection Agency (EPA) Region 6 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 under Part I.E.2 of the Individual Permit for Sites for which storm water samples have exceeded target action levels. For the reasons discussed below, 18 such 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 (the Consent Order). As discussed below, NMED is currently reviewing the information necessary to confirm that these Sites are eligible for certificates of completion (CoCs). This extension is necessary to allow the Permittees to meet their obligations under the Individual Permit.

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.

Background

On October 29, 2012, and April 11, 2013, the Permittees met with representatives of EPA and discussed 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 the nature and extent of potential contamination are defined, demonstrates no unacceptable risk to human health or the environment under current and reasonably foreseeable land use, and recommends corrective action complete status. Upon approval of this 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.

Since September 2014, the Permittees have submitted 5 requests for CoCs under the Consent Order for which a response from NMED is still pending. The Permittees submitted 1 additional request for which NMED has requested additional information. These 6 requests include 18 Sites for which completion of corrective action must be certified under Part I.E.2 of the Individual Permit by October 31, 2015. These Sites and the associated CoC requests are as follows.

- Request for CoC with controls for a SWMU in the Pueblo Canyon Aggregate Area (investigation report approved by NMED on September 23, 2005; CoC request submitted on September 30, 2014; NMED requested additional information; Permittees plan to submit the information by December 15, 2015):
 - SWMU 01-002(b)-00 within ACID-SMA-2 and ACID-SMA-2.1
- Request for CoCs for AOCs and SWMUs in the Bayo Canyon Aggregate Area (investigation report approved by NMED on May 27, 2008, with direction to modify [did not comment on Sites listed in this request]; CoC request submitted on June 15, 2015):
 - SWMU 10-001(a) within B-SMA-0.5
 - SWMU 10-001(b) within B-SMA-0.5
 - SWMU 10-001(c) within B-SMA-0.5
 - SWMU 10-001(d) within B-SMA-0.5
 - SWMU 10-004(a) within B-SMA-0.5
 - SWMU 10-004(b) within B-SMA-0.5
 - AOC 10-008 within B-SMA-0.5
 - AOC 10-009 within B-SMA-0.5
- Request for CoC for a SWMU in the Lower Mortandad/Cedro Canyons Aggregate Area (investigation report approved by NMED on September 10, 2012; CoC request submitted on June 15, 2015):
 - SWMU 05-004 within M-SMA-12.6

- Request for CoCs for an AOC and SWMUs in the Delta Prime Site Aggregate Area (direction to modify the Phase II investigation report issued by NMED on October 19, 2010 [did not comment on Sites listed in this request]; CoC request submitted on June 18, 2015):
 - AOC 21-009 within LA-SMA-5.91
 - SWMU 21-013(c) within DP-SMA-3
 - SWMU 21-024(j) within LA-SMA-6.395
 - SWMU 21-027(d) within LA-SMA-5.91
 - SWMU 21-029 within DP-SMA-0.3

- Request for CoCs for SWMUs in the Cañon de Valle Aggregate Area (investigation report approved by NMED on February 11, 2008; CoC request submitted on August 13, 2015):
 - SWMU 16-017(a)-99 within CDV-SMA-1.3
 - SMWU 16-026(m) within CDV-SMA-1.3

- Request for CoC for an AOC in the Guaje/Barrancas/Rendija Canyons Aggregate Area (investigation report approved by NMED on December 20, 2007; CoC request submitted on August 13, 2015):
 - AOC C-00-041 within R-SMA-1

Each CoC request references the Consent Order documents demonstrating that the nature and extent of contamination are defined for all SWMUs and AOCs included in requests and that the SWMUs and AOCs pose no unacceptable risk to human health and the environment under current and reasonably foreseeable land use.

Force Majeure Request

1. The Cause or Causes of the Delay

Under the Consent Order, the investigations of certain Sites under the Individual Permit have progressed to the point where they are eligible to receive a CoC by NMED, thereby demonstrating the Sites no longer pose 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. From September 30, 2014, to August 13, 2015, the Permittees submitted the 6 CoC requests to NMED, which included the 18 Sites identified above. The Permittees are currently awaiting a response to these requests from NMED.

Several of these requests for CoCs were submitted in 2015. While these requests have not been with NMED for review for 1 yr or longer, all the Sites in this request are eligible for CoCs because they pose no potential unacceptable risk to human health and the environment based on determinations made in the respective aggregate area investigation reports. NMED subsequently approved the investigation reports, with the exception of the investigation report for Delta Prime Site Aggregate Area. In this case, NMED did not approve the investigation report but issued a direction to modify that required a Phase III investigation work plan for some of the sites in the aggregate area. NMED did not comment on any of the Sites listed in this request, and none of these Sites were included in the Phase III investigation work plan (i.e., the Phase II investigation report recommended these Sites for corrective action complete).

In the case of Site 01-002(b)-00, NMED requested additional information before making a determination for the CoC. The risk-screening assessments for this Site were presented in the canyon watershed investigation report for Los Alamos and Pueblo Canyons rather than in the Pueblo Canyon Aggregate Area investigation report. As is done in canyon watershed investigation reports, risk-screening assessments were conducted for the two canyon reaches that constitute this Site rather than for the Site as a whole, as is done in aggregate area investigation reports. NMED requested that the risk be reevaluated for the Site as a whole and the revised risk assessments be submitted to NMED. The Permittees will submit this information to NMED by the end of 2015. The Permittees do not expect the revised risk-screening assessments to affect the original conclusions that the Site poses no unacceptable risk to human health and the environment under current and reasonably foreseeable land use.

Therefore, the Permittees have determined that the most appropriate path to completion of corrective action under Part I.E.2. is receipt of the CoC. This request for a force majeure for these Sites is necessitated only by the unlikelihood that NMED will respond to these requests before the October 31, 2015, deadline for corrective action.

2. Expected Duration of the Delay, Including Affected Obligations

The Permittees expect to receive responses from NMED and CoCs issued within 1 yr of this request for extension.

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

With one exception, NMED is not awaiting any further response from the Permittees related to the CoC requests. For Site 01-002(b)-00 in the Pueblo Canyon Aggregate Area, the Permittees will submit the revised risk assessment by the end of 2015. If additional requests for supplemental information are received from NMED for other Sites, the Permittees will respond to these requests as expeditiously as possible and will work diligently with NMED to resolve any outstanding issues before submitting the responses.

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

The Permittees expect to submit the information requested from NMED related to the CoC request for SWMU 01-002(b)-00 by December 15, 2015. At present, no additional actions are required by the Permittees for any other Sites. In the event any additional actions are required by NMED, the Permittees will work expeditiously and diligently to provide NMED with 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 CoCs for the 18 Sites identified in this request. The Permittees will continue to maintain all baseline and enhanced control measures at these Sites.

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@em.doe.gov).

Sincerely,



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Environmental Protection Division
Los Alamos National Laboratory

Sincerely,



Douglas E. Hintze, Manager
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Public Reading Room (EPRR)
PRS Database
ADESH Records