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CERTIFIED MAIL – RETURN RECEIPT REQUESTED

October 4, 2019

Arturo Duran, Designated Agency Manager (DAM)
Environmental Management
Los Alamos Field Office
P.O. Box 1663 MS-M984
Los Alamos, NM 87545

**RE: APPROVAL
EXTENSION REQUEST FOR KNOWN CLEANUP SITES
FISCAL YEAR 2019 MILESTONE # 19, APPENDIX B, CONSENT ORDER
LOS ALAMOS NATIONAL LABORATORY
EPA ID#NM0890010515
HWB-LANL-MISC**

Dear Mr. Duran:

The New Mexico Environment Department (NMED) has received the United States Department of Energy's (DOE's) *Request for Extension of Known Cleanup Sites Consent Order Milestone* (Request), dated and received on September 20, 2019 and referenced by EM-LA-N3B-30AD-00516.

Milestone #19 for Federal Fiscal Year 2019 is listed in Appendix B of the 2016 Order on Consent (CO) as "*Field Completion Letter Report for Aggregate Area Known Cleanup Sites Campaign: SWMU 39-002(a), SWMU 46-004(q), SWMU 15-008(b), and SWMU 15-007(c)*". The due date for submittal of Milestone #19 was September 30, 2019.

Section XXVIII of the CO allows for extensions for good cause upon receipt of a timely request. The Request cites Section XXVIII, Extensions, C(7) and Section XXXII Force Majeure, B(1) [*sic*] of the CO as good cause for the extension. The Request was submitted 10-days prior to the milestone due date.

Milestone #19 includes cleanup of four solid waste management units (SWMUs). Site cleanups have been completed at three of the four SWMUs: SWMU 39-002(a), SWMU 46-004(q), and SWMU 15-007(c). The site cleanup is not complete at SWMU 15-008(b). DOE provides several justifications for not completing the field work on time. The justifications include the need to remove more soil than originally planned, force majeure impacts from Hurricane Dorian which impacted obtaining analytical results, weather delays from lightening and heavy rain, and schedule delays from competing mission-critical work at the site.

DOE is asserting force majeure because the analytical results were delayed by over three weeks when Hurricane Dorian caused power outages and evacuations in South Carolina where the analytical laboratory is located. Section XXXII.D of the CO requires that DOE notify NMED within seven days after a force majeure event; the notification shall identify and provide NMED with delay expected and provide justification for the length of delay needed for recovery. DOE did not follow the provisions of the CO related to force majeure events and did not send a notification within seven days of force majeure event. Therefore, is not an acceptable good cause for the delay.

Another justification provided by DOE is that on-site weather-related delays from lightening and heavy rain impacted the completion of Milestone #19. As a best practice, DOE should have built in contingencies for normal weather-related delays during the planning process. Therefore, NMED does not consider this as a good cause for failing to meet the milestone. NMED is concerned that there appears to be a trend in missed deadlines due to inadequate planning, either on the part of DOE or it's contractor, or both.

The site cleanup efforts at SWMU 15-008(b) began on June 28, 2019 and are not complete to date. The site appears to not have been adequately characterized before the remediation activities began and the scope increased when analytical results were received from the laboratory. DOE states that based on initial site data, approximately 356 cubic yards of soil was planned for removal. Upon receipt of the analytical data, it was determined that approximately 1325 cubic yards of soil would have to be excavated to meet the remediation goals. The scope of cleanup increased substantially from what was anticipated. NMED accepts this justification as good cause for requesting extension.

DOE notified NMED electronically on September 30, 2019 that approximately 973 cubic yards of soil had been excavated and placed into containers and approximately 352 cubic yards of soil remains to be excavated. DOE is requesting an additional 45-days to complete the tasks

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associated with Milestone #19 which includes 14-days to finalize and submit the letter report to NMED.

NMED hereby approves the Request. Milestone #19 must be finalized and a letter report must be submitted by November 15, 2019. If you have any questions, please contact Neelam Dhawan at (505) 476-6042.

Sincerely,



John E. Kieling
Chief

LANL Consent Order DAM
Hazardous Waste Bureau

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