



DEPARTMENT OF ENERGY
 Environmental Management Los Alamos Field Office (EM-LA)
 Los Alamos, New Mexico 87544

EMLA-2022-BF114-02-001

Date: 08/11/2022



Mr. Rick Shean
 Bureau Chief
 Hazardous Waste Bureau
 New Mexico Environment Department
 2905 Rodeo Park Drive East, Building 1
 Santa Fe, NM 87505-6313

Subject: Request for Extension for Fiscal Year 2022 Appendix B Milestone #7, Letter Report Documenting Completion of R-73 and Collection of First Samples due to Force Majeure and Unanticipated Breakage of Lines of Pipe

Dear Mr. Shean:

Pursuant to Section XXVIII (Extensions) of the 2016 Compliance Order on Consent (Consent Order), the U.S. Department of Energy (DOE) Environmental Management Los Alamos Field Office (EM-LA) is requesting an extension from the New Mexico Environment Department (NMED) for Consent Order fiscal year (FY) 2022 Appendix B Milestone #7, *Letter Report Documenting Completion of R-73 and Collection of First Samples*, due to: (1) force majeure and recovery from force majeure; and (2) unanticipated breakage of lines of pipe. Both circumstances constitute good cause for an extension under Section XXVIII.C(1) and (6) of the Consent Order. The basis for this extension request is set forth below.

Section XXXII (Force Majeure) of the Consent Order defines force majeure as “any event arising from causes beyond the control of DOE or its respective agents, contractors, or employees that causes a delay in or prevents the performance of any obligations of DOE under this Consent Order.” Force majeure under the Consent Order includes, but is not limited to: (1) “[in]ability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than DOE;” and (2) “natural disasters such as fire or flood.”

1. Delay in New Mexico Office of the State Engineer (NMOSE) Approval of R-73 WR-07 Permit Application

On March 14, 2022, EM-LA notified NMED in a letter titled “Status Update and Request for Assistance Regarding Letter of Completion Report of R-73 and Collection of First Samples Fiscal Year 2022 Milestone #7, Appendix B of the 2016 Compliance Order on Consent” that NMOSE approval of the drilling permit was required by March 21, 2022, in order for EM-LA to meet the Consent Order Appendix B milestone date of August 31, 2022. EM-LA did

not receive NMOSE approval to drill R-73 until April 28, 2022, at 5:05 p.m. This was 38 days after the March 21, 2022 approval date, which EM-LA had informed both NMOSE and NMED was necessary to meet the milestone date of August 31, 2022. On April 29, 2022, EM-LA started drilling R-73. Additional information regarding the impact of NMOSE's delay in approving this permit is as follows:

- On December 14, 2021, EM-LA notified NMOSE by email of the anticipated submittal of the R-73 WR-07 permit application in February 2022. EM-LA explained that the R-73 well installation was an FY 2022 milestone under the Consent Order with a due date of August 31, 2022, and that NMOSE review and approval was required by the end of March 2022 to meet the Consent Order milestone date.
- On December 17, 2021, NMOSE replied that NMOSE could not guarantee they could review and approve within the stated timeframe. NMOSE also noted that they process applications in the order received.
- In January 2022, EM-LA was awarded the R-73 drilling subcontract. The drilling contract was finalized on February 15, 2022. The driller's schedule demonstrated that NMOSE approval of the R-73 WR-07 permit application was needed by March 21, 2022, so drilling could begin by April 1, 2022 to meet the August 31, 2022 milestone date.
- EM-LA notes that NMOSE review and approval of WR-07 permit applications to drill wells is typically within 11 to 21 calendar days. Before the R-73 WR-07 permit application, the longest time NMOSE had taken to review and approve a WR-07 permit application for EM-LA activities was 36 calendar days. EM-LA submitted the R-73 WR-07 permit application to NMOSE on January 31, 2022. It took 87 calendar days to receive NMOSE approval on April 28, 2022. This was over a 141% increase in NMOSE review and approval time from the 36 calendar day maximum EM-LA had previously experienced.
- On March 14, 2022, EM-LA notified NMED of the delay in NMOSE approval and requested NMED's assistance in a letter titled "Status Update and Request for Assistance Regarding Letter of Completion Report of R-73 and Collection of First Samples Fiscal Year 2022 Milestone #7, Appendix B of the 2016 Compliance Order on Consent." This letter was within 7 days of when EM-LA became aware NMOSE approval of the R-73 WR-07 permit application would likely not be received by March 21, 2022. In the letter, EM-LA respectfully requested NMED to engage with NMOSE to expedite approval of the permit application to ensure timely completion of the milestone.

2. Force Majeure: 2022 Cerro Pelado Fire and Fire Restrictions

On May 10, 2022, EM-LA notified NMED of a force majeure resulting from the Cerro Pelado fire in a letter titled "2022 Cerro Pelado Fire Force Majeure Event" pursuant to Section XXXII (Force Majeure) of the Consent Order. The letter provided an update to NMED of the force majeure due to the Cerro Pelado fire and fire restrictions, and informed NMED that the event may impact the schedule for environmental remediation activities

under the Consent Order, including FY 2022 Appendix B milestones and targets. The Cerro Pelado fire, which began on April 22, 2022, was within 3.5 miles of the perimeter of the Los Alamos National Laboratory and burned over 45,600 acres.

On May 8, 2022, the Los Alamos National Laboratory and Los Alamos County announced that they would move to the “set” phase of the “ready, set, go” emergency preparedness plan on May 9, 2022 (<https://discover.lanl.gov/news/0508-cerro-pelado-2>). The “set” phase means that conditions could change rapidly, and it is time to create a plan and prepare in case of an evacuation order. On May 9, 2022, at 8:00 a.m., EM-LA moved to the “set” phase of the “ready, set, go” emergency preparedness plan. As part of the move to “set,” EM-LA and Newport News Nuclear BWXT-Los Alamos, LLC (N3B) implemented maximum telework for all non-mission essential employees. By 12:00 p.m. on May 9, 2022, fieldwork was paused. The R-73 well drilling equipment was placed in a safe configuration, and the drilling team was released from work activities until further notice from EM-LA. On May 23, 2022, the drilling team resumed R-73 drilling operations, albeit in a limited capacity.

EM-LA has evaluated the operational impacts to R-73 drilling activities from shutdown of drilling due to implementing the “set” phase of the emergency preparedness plan (i.e., demobilization), work stoppage during the “set” phase, remobilization of the drilling work, and delays due to red flag warnings. EM-LA estimates a total delay of 38 days of operational drilling time (assuming 24-hr drilling shifts) due to, and recovery from, this force majeure event.

3. Unanticipated Breakage: Lines of Pipe

On July 28, 2022, approximately 880ft of 14-in. drive casing downhole at R-73 broke as the casing was being removed from the borehole while placing the annular fill. This casing currently remains stuck downhole. EM-LA notified NMED of the condition on the day of the occurrence. EM-LA and N3B are in the process of evaluating alternatives to rectify the condition. However, the schedule impact due to the breakage is not yet known. Pursuant to Section XXVIII.C(6) of the Consent Order, “Unanticipated breakage or accident to machinery, equipment, or lines of pipe” constitutes good cause for an extension.

4. FY 2022 Appendix B Milestone #7 Extension Request

EM-LA hereby requests an extension of Consent Order FY 2022 Appendix B Milestone #7, Letter Report Documenting Completion of R-73 and Collection of First Samples, due to force majeure and the unanticipated breakage of lines of pipe. EM-LA has determined that currently the total schedule impact due to force majeure and the unanticipated breakage is at 49 days. However, the schedule impact resulting from the breakage of lines of pipe will not be known until the recovery effort has been identified, approved by the NMOSE and NMED (as may be appropriate), and implemented. Because of these unfortunate events, this Milestone #7 can no longer be achieved during FY 2022. Per Section XXXV.A(3) of the

Consent Order, “A milestone for which NMED grants an extension pursuant to Section XXVIII (Extension) beyond the currently FY is no longer a milestone.”

For the foregoing reasons, EM-LA respectfully requests that NMED grant an extension for this milestone beyond FY 2022. NMED’s granting of an extension for completion of R-73 and collection of first samples will not affect other milestones or targets currently listed in FY 2022 Appendix B of the Consent Order.

If you have questions, please contact Christian Maupin at (505) 695-4281 (christian.maupin@em-la.doe.gov), or Cheryl Rodriguez at (505) 414-0450 (cheryl.rodriguez@em.doe.gov).

Sincerely,

**ARTURO
DURAN**

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Date: 2022.08.11
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Arturo Q. Duran
Compliance and Permitting Manager
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cc:

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