



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

January 4, 2023

VIA FIRST CLASS MAIL AND EMAIL

Arturo Duran
Designated Agency Manager
U.S. Department of Energy-Environmental Management
Los Alamos Field Office
1200 Trinity Drive, Suite 400
Los Alamos, NM 87544

**RE: RESPONSE
TRANSMITTAL OF UPDATED FISCAL YEAR 2023 APPENDICES A, B, AND C TO THE
2016 COMPLIANCE ORDER ON CONSENT
LOS ALAMOS NATIONAL LABORATORY
EPA ID#NM0890010515
HWB-LANL-MISC-ORDER**

Dear Mr. Duran:

The New Mexico Environment Department (NMED) has received the United States Department of Energy (DOE)'s *Updated Fiscal Year 2023 Appendices A, B, and C to the 2016 Compliance Order on Consent* dated December 29, 2022 and referenced by EMLA-23-BF85-2-1 (hereinafter, "December 29, 2022 Version of DOE Updated Appendices"). From NMED's perspective, the December 29, 2022 Version of DOE Updated Appendices is premature, since negotiations on the final terms of updates to the appendices are still ongoing. The specific statement in the cover letter to the December 29, 2022 Version of DOE Updated Appendices that both NMED and DOE *had mutually agreed upon* updates to Appendix B for fiscal year (FY) 2023 for 2016 Compliance Order on Consent (CO) is untrue (emphasis added).

The remainder of this letter will address the unresolved milestones contained in the Appendix B portion of the December 29, 2022 Version of DOE Updated Appendices, since NMED has reviewed and does accept the updated Appendices A and C.

Background

On July 28, 2022, DOE submitted proposed Appendix B for FY 2023 for CO, referenced by EMLA-2022-BF127-02-001 (hereinafter, "July 28, 2022 DOE Proposed Appendix B"). The July 28, 2022 DOE Proposed Appendix B included sixteen (16) milestones for FY 2023, sixteen (16) targets for FY 2024 and thirteen (13) targets for FY 2025. On September 9, 2022, September 29, 2022 and December 5, 2022, NMED staff and DOE staff met to discuss the milestones and targets for FY 2023. During these negotiations, NMED staff agreed to thirteen (13) of the sixteen (16) milestones contained in the July 28, 2022 DOE draft updates to Appendix B. During the negotiations, the data obtained from regional groundwater monitoring well R-42 allowed NMED staff and DOE staff to agree that the milestone for replacing R-42 would be deleted from the July 28, 2022 DOE Proposed Appendix B.

At the time of the December 5, 2022 meeting, two (2) milestones remained unresolved and subject to ongoing negotiation. First, NMED and DOE could not come to an agreement on the letter reports

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Hazardous Waste Bureau - 2905 Rodeo Park Drive, Bldg. 1, Santa Fe, New Mexico 87505 - (505) 476-6000
www.env.nm.gov

Arturo Duran

Page 2

documenting completion of and collection of initial samples for regional groundwater monitoring wells R-76 and R-77. In the December 29, 2022 Version of DOE Updated Appendices, these milestones were no longer referred to as milestones; instead, DOE recharacterized completion of monitoring wells and collection of first samples from R-76 and R-77 as FY 2024 targets with no deliverable dates. Ongoing negotiations regarding the need for completion of R-76 as a milestone and R-77 as a milestone, both with deliverable dates, must precede the finalization of Appendix B. NMED remains concerned with the slow progress of the Chromium Plume Interim Measures (hereinafter, "IM") and Characterization Campaign. Over the last several months, NMED staff and DOE staff have had numerous technical discussions regarding progress on this IM and have mutually identified the data gaps that need to be addressed to better characterize the chromium plume and move towards final remediation of the plume. In the next draft of Appendix B by DOE, the milestones must describe measures for improved progress on this IM with deliverable dates.

Prior to receiving the December 29, 2022 Version of DOE Updated Appendices, NMED staff had discussed with DOE staff the steps it would take to reach a mutual agreement on the milestones contained in the updates to Appendix B. Several weeks ago, NMED staff and DOE staff discussed the need to meet again in January 2023, after compiling data from a causal analysis for problems encountered during drilling of regional monitoring well R-73 and discussing NMED technical staff's and DOE technical staff's respective differing perspectives with respective senior leadership.

It must be noted that adequate federal funding does not appear to be an impediment to performing the milestones NMED staff have proposed in multiple meetings with DOE staff. It is NMED's understanding that DOE has obtained sufficient funding for FY 2023 to complete drilling of regional monitoring wells R-76 and R-77 within the current fiscal year.

We request that NMED staff and DOE staff meet within the next couple of weeks to continue the negotiations necessary to reach a meeting of the minds on Appendix B. To discuss the next draft of Appendix B, please contact me at rick.shean@env.nm.gov or 505-629-6494.

Sincerely,

Rick Shean

Digitally signed by Rick
Shean
Date: 2023.01.04
09:18:51 -07'00'

Rick Shean

Acting Resource Protection Division Director and Hazardous Waste Bureau Chief

cc: N. Dhawan, NMED HWB
C. Stone, NMED HWB
L. King, US EPA Region 6
L. Bishop, EM-LA
C. Rodriguez, EM-LA
T. Thompson, N3B
K. Ellers, N3B
C. Maupin, N3B
P. Maestas, N3B
W. Alexander, N3B
emla.docs@em.doe.gov
n3brecords@EM-LA.DOE.GOV
RegDocs@EM-LA.DOE.GOV

File: 2023, LANL, December 29, 2022 Version of DOE Updated Appendices