



July 2, 2025

Brian Harcek
Designated Agency Manager
Environmental Management
U.S. Department of Energy
Los Alamos Field Office
1200 Trinity Drive, Suite 400
Los Alamos, New Mexico, 87544

RE: RESPONSE
DEFERMENT OF CORRECTIVE ACTION ACTIVITIES FOR SOLID WASTE MANAGEMENT UNIT 50-009 AT MATERIAL DISPOSAL AREA C UNDER THE 2016 COMPLIANCE ORDER ON CONSENT, AS REVISED IN 2024
LOS ALAMOS NATIONAL LABORATORY (LANL)
EPA ID #NM0890010515

Dear Brian Harcek,

The New Mexico Environment Department (NMED) has received the United States Department of Energy's (DOE) *Deferment of Corrective Action Activities for Solid Waste Management Unit 50-009 at Material Disposal Area C (MDA C) under the 2016 Compliance Order on Consent, as Revised in 2024* (Notification), dated and received June 18, 2025 and referenced by EMID-703847.

NMED has reviewed the notification and is issuing a determination that Solid Waste Management Unit 50-009 is not eligible to receive a change of status to deferment and that the notification does not meet the criteria required following the 2016 Compliance Order on Consent (2016 CO), as modified on September 30, 2024.

NMED reiterates the lack of concurrence on the change of status designation for MDA-C that was submitted earlier by DOE on March 7, 2023, in which DOE requested to defer the site due to active facility operations. NMED communicated the lack of concurrence and issued the Statement of Basis for Material Disposal Area C on September 7, 2023, that proposed a final remedy and facilitated public input in the proposed final remedy through a public comment period. During this public comment period, NMED received three requests for a public hearing on the matter pursuant to the hearing requirements under 20.4.1.901.F NMAC, including two from LANL entities and one from Nuclear Watch New Mexico.

NMED has been actively proceeding with a public hearing on the matter, having tentatively scheduled the public hearing for early 2026, having assigned a hearing officer and docket number on the matter, as well as participating in an informal conference held on January 15, 2025 with the Parties, which

included DOE representatives from each entity on the hearing requests. NMED notes that the proposed change of status to deferred has not been presented during any public hearing planning for Material Disposal Area C.

The process for final remedy selection following the procedures required in the 2016 CO has reached a point to facilitate public involvement through a public hearing and that changing the status to deferred would unjustly diminish the public involvement received on the matter, directly contradicting the reasonable opportunity for interested persons to participate in the public hearing, as required by the 2016 CO Section 17.B.

In addition, DOE's recent deferment notice did not meet the minimum requirements set forth in the respective 2016 CO. As stated in DOE's notification, the proposed reason for deferral is the site's association with active facility operations per 2016 CO Section 11.B.2. However, DOE did not include a copy of such notification to the Four Accord Pueblos and any municipality, county, or pueblo that shares a common border with the Facility, as required by the 2016 CO Section 11.C.1. Based on recent NMED discussions with San Felipe, it is recommended they are also included in any tribal communications and consultation going forward.

DOE cannot unilaterally determine that the proposed action does not potentially affect the priorities of any municipality, county, or pueblo and, thus, requires conferring with appropriate representatives to make this determination. NMED does not agree that the change to a deferred status would not result in a change to the fiscal year (FY) summary provided in Section 8.F.3.a of the 2016 CO, which states that within ninety days following the conclusion of the public hearing, NMED will publish a final decision document that requires the submission of a Corrective Measures Implementation Plan.

NMED anticipates the submission of the FY 2026 summary no later than July 31, 2025, and is expecting to see the submission of the implementation plan for Material Disposal Area C included within the 3-year schedule. Furthermore, NMED notes that the current management of Material Disposal Area C includes controls preventing site access and that sampling of the vapor monitoring network is required on an annual basis. Therefore, the Material Disposal Area C footprint has not been authorized to be utilized for active facility operations and does not meet active facility requirements to be eligible for deferred status following the 2016 CO Section 11.B.2.

DOE's continuous attempts to submit notifications and responses that disregard the regulatory direction previously provided by NMED is a direct contradiction to one of the general purposes of the 2016 CO and does not reflect DOE's commitment to drive toward tangible, measurable environmental clean-up. Communications that are not made as part of a good faith effort towards achieving the regulatory requirements undercut the corrective action process agreed to in the 2016 CO and do not align with the assertions made by DOE when the submission of documents are made. If the actions taken by DOE continue to contradict the fundamental concepts of the 2016 CO, NMED will utilize to the fullest extent all statutory and legal authority necessary to enforce the requirements of the 2016 CO in order to ensure that New Mexicans receive effective cleanup of legacy contamination at LANL in a timely manner.

Sincerely,

JohnDavid Nance Digitally signed by JohnDavid Nance
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JohnDavid Nance
Designated Agency Manager
Chief, Hazardous Waste Bureau
New Mexico Environment Department

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File: 2025 LANL, Response, Deferment of Corrective Action Activities for Solid Waste Management Unit 50-009 at Material Disposal Area C under the 2016 Compliance Order on Consent, as Revised in 2024