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Brian Harcek  
Designated Agency Manager  
Environmental Management  
U.S. Department of Energy  
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**VIA U.S. MAIL AND EMAIL**

**Re: Initiation of Dispute Resolution Under Section 25 of the  
2016 Compliance Order on Consent (Revised 2024)**

Dear Brian Harcek:

Please accept this correspondence on behalf of the New Mexico Environment Department (“NMED”), Hazardous Waste Bureau (“HWB”), and J.D. Nance, the LANL Consent Order Designated Agency Manager. Pursuant to Section 25.B of the 2016 Compliance Order on Consent, Revised 2024 (“Consent Order”), NMED HWB is invoking dispute resolution. This letter is to inform the U.S. Department of Energy (“DOE”) that NMED is formally invoking dispute resolution regarding the deferral of corrective action activities at Material Disposal Area C (MDA-C), Solid Waste Management Unit 50-009. Please note that this firm represents NMED HWB and Mr. Nance regarding this matter. All future correspondence regarding this matter should be directed to our firm.

As you are aware, on behalf of DOE, you sent a notification on June 18, 2025 stating that corrective action activities would be deferred at MDA-C, citing accordance with Section 11 of the Consent Order. Section 11.B of the Consent Order provides for four circumstances in which a Solid Waste Management Unit (“SWMU”) or Area of Concern (“AOC”) that is not already listed as deferred in Appendix A may be deferred. Notably, MDA-C is not currently listed on Appendix A as Deferred. Accordingly, in order for the deferral to be proper, one of the four circumstances enumerated in Section 11.B must be met. While DOE cites Section 11.B.2 as the basis for deferral, NMED disagrees that this designation is proper as the location of MDA-C is not associated with active Facility operations. This position is consistent with the correspondence dated July 2, 2025 from Mr. Nance to DOE.

As previously described, the corrective action activities at MDA-C have been ongoing since the early 2000's, with no indication in the administrative record that active facility operations impact the ability to execute the required cleanup work. Contrary to that position, DOE opted to continue through the corrective action process with the resubmission of the corrective measures evaluation document in 2021, which evaluated and proposed a final remedy technology for implementation and final cleanup of MDA-C. As you are aware, since November 2024, the parties have been actively participating in an administrative hearing process, with a request for hearing submitted by Nuclear Watch New Mexico, Nicholas Maxwell, DOE, and DOE's co-permittees. The final public hearing, scheduled for the last week in February and the first week in March 2026, will allow the parties to present testimony and evidence regarding the final remedy for cleanup of MDA-C. During this ongoing administrative procedure, there has been no mention or indication that MDA-C is associated with active Facility operations. DOE's intended deferral would circumvent the administrative hearing that provides multiple opportunities for public participation.

Furthermore, the proximity to active Facility operations and the impact operations may have on the execution of final cleanup have not been mentioned at any point in the DOE conducted analysis of the final remedy alternatives and were not indicated as factors for consideration during the administrative record. Moreover, at no point during the administrative hearing process requested by DOE has DOE indicated the intention to change the status of MDA-C to deferred. Additionally, it is worth noting that the physical site conditions of MDA-C have not changed, thus, there is no newly discovered evidence or circumstances which support the designation of MDA-C as deferred due to association with active Facility operations. Such designation, while the parties are in the process of facilitating public participation and a final remedy selection through the administrative hearing process, is a direct contradiction to the purposes of the public hearing process to facilitate public participation in the final remedy selection.

The deferred status change for MDA-C at this point in the corrective action process and without providing adequate just cause supporting the designation change is a direct example of DOE again acting contrary to the terms and spirit of the Consent Order in order to circumvent the cleanup work required by NMED. Despite having requested a public hearing concerning the selection of a final remedy for MDA-C and participating in the process to this point, DOE has, as of today's date, purported to withdraw the pending Corrective Measures Evaluation Report ("CME Report"). This unilateral action, particularly given DOE's knowledge of NMED's objection to the deferred status and the pendency of the public hearing, demonstrates DOE's unwillingness to work with NMED to accomplish effective and efficient cleanup of legacy waste at Los Alamos National Laboratory.

DOE continues to respond to the regulatory direction provided by NMED in ways that do not reflect any good faith efforts to be accountable for cleanup of the legacy waste at Los Alamos National Laboratory and, in fact, are directly contradictory to the assertions previously made by DOE. As you may recall, during the substantial negotiation process in 2023-24 for revision of the Consent Order, DOE repeatedly reiterated its desire to work collaboratively and effectively with NMED. This recent example of an improper, unilateral deferral contrary to the terms of the Consent Order, along with the bad-faith withdrawal of the CME Report, contradict such assertions and reassurances from DOE. Misuse of the provisions provided in the Consent Order which provide a framework to address the complications arising from corrective action cleanup work and the active facility operations indicates that DOE does not prioritize the environmental cleanup of the legacy contamination sites. The Settlement Agreement was intended to satisfy the formal complaint filed by NMED and the inability for NMED and DOE to reach alignment on key corrective action activities, even with the modified provisions of the Consent Order, indicates the necessity of the Section 25 Dispute Resolution procedure.

NMED proposes that resolution can be achieved by rescinding the deferred status designation for MDA-C and proceeding with the public hearing on the matter scheduled for early 2026. Such resolution also requires that DOE rescind its withdrawal of the CME Report regarding MDA-C. As may be reasonably expected, in anticipation of the public hearing regarding the final remedy selection for MDA-C, NMED is currently engaged in resource intensive preparations. Accordingly, an expedited resolution process is necessary and in both parties' best interests. NMED respectfully requests a meeting to engage in informal negotiations by August 6, 2025. We look forward to hearing from you regarding your availability in the next seven (7) business days for this informal dispute resolution meeting. In the meantime, please do not hesitate to contact us by telephone or by email at [marcus@roblesrael.com](mailto:marcus@roblesrael.com) and [jnixon@roblesrael.com](mailto:jnixon@roblesrael.com), with Mr. Nance copied on all such correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read 'Marcus J. Rael, Jr.', with a large, sweeping flourish extending to the right.

Marcus J. Rael, Jr., Esq.

MJR:kr

cc: J.D. Nance, NMED HWB; LANL Consent Order DAM  
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