

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

NEW MEXICO ENVIRONMENT DEPARTMENT,)	
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)	
Complainant,)	ADMINISTRATIVE ORDER
)	NO. HWB-26-02
v.)	
)	
UNITED STATES DEPARTMENT OF ENERGY, NATIONAL NUCLEAR SECURITY ADMINISTRATION, TRIAD NATIONAL SECURITY, LLC, and NEWPORT NEWS NUCLEAR BWXT-LOS ALAMOS, LLC EPA ID #: NM0890010515,)	
)	
)	
Respondents.)	
)	

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to the New Mexico Hazardous Waste Act (“HWA”), New Mexico Statutes Annotated (“NMSA”) 1978, §§ 74-4-1 to -14, the Resource Protection Compliance and Enforcement Bureau (“RPCEB”) of the Compliance and Enforcement Division (“Division”) of the New Mexico Environment Department (“NMED”), issues this Administrative Compliance Order (“ACO”) to the United States Department of Energy (“DOE”), through its Office of Environmental Management, Los Alamos Field Office (“EM-LA”); National Nuclear Security Administration, Los Alamos Field Office (“NNSA”); Triad National Security LLC (“Triad”); and Newport News Nuclear BWXT-Los Alamos, LLC (“N3B”) (collectively “Respondents”). This Order requires that the Respondents comply with the requirements set forth in the Los Alamos National Laboratory (“LANL”) 2016 Compliance Order on Consent (amended September 2024) (“Consent Order”), the HWA, and the Hazardous Waste Management Regulations (“HWMR”) in the New Mexico

Administrative Code (“NMAC”).

A. PARTIES AND LAW

1. Pursuant to the Department of Environment Act, NMSA 1978, Sections 9-7A-1 to -15, NMED is an agency of the executive branch within the government of the State of New Mexico.

2. NMED, through its RPCEB, is charged with administration and enforcement of the HWA and HWMR.

3. The U.S. Environmental Protection Agency (“EPA”) has granted the State of New Mexico delegated authority to implement the RCRA, 42 U.S.C. Sections 6901 to 6992k, within the state. The HWMR incorporate portions of 40 Code of Federal Regulation (“CFR”) Sections 260 through 270, 40 CFR Section 279 and related federal regulations by reference.

4. The State of New Mexico adopted the federal hazardous waste regulations by reference on June 14, 2000. The State of New Mexico subsequently amended the HWMR on March 1, 2009 and on December 1, 2018, to adopt updated federal hazardous waste regulations.

5. LANL is a national research laboratory (“facility”) located in Los Alamos County, New Mexico. LANL is approximately 60 miles north-northwest of Albuquerque and 25 miles northwest of Santa Fe, occupying approximately 36 square miles on the Pajarito Plateau. DOE started generating and storing hazardous waste at LANL during the Manhattan Project. LANL is owned by Respondent DOE and is currently co-operated by Respondents DOE, NNSA, Triad, and N3B under LANL Hazardous Waste Facility Permit (Permit No. NM0890010515).

6. Respondent DOE is an executive agency of the United States Government. Respondent DOE is a “person” within the meaning of NMSA 1978, Section 74-4-3 of the HWA.

7. DOE established EM-LA as a DOE field office. EM-LA is tasked with cleaning up

and remediating legacy radioactive waste, legacy hazardous waste, contaminated soil, and contaminated groundwater, and shipping radioactive and hazardous waste to offsite disposal locations.

8. Respondent NNSA is a semi-autonomous agency that was established within DOE. Respondent NNSA is a “person” within the meaning of NMSA 1978, Section 74-4-3 of the HWA.

9. Respondent Triad is a corporate entity established to manage and operate multiple operations at LANL on behalf of DOE and NNSA pursuant to Contract No. 89233218CNA000001. Respondent Triad is a “person” within the meaning of NMSA 1978, Section 74-4-3 of the HWA.

10. Respondent N3B is a limited liability partnership registered in SAM.gov as a for-profit organization and a subsidiary of Huntington Ingalls Industries, Inc. Respondent N3B performs environmental remediation, waste management, and strategic planning services for EM-LA. Respondent N3B is a “person” within the meaning of NMSA 1978, Section 74-4-3 of the HWA.

11. NMED issued the Consent Order to Respondent DOE pursuant to NMSA 1978, Section 74-4-10 of the HWA, NMSA 1978, Section 74-9-36(D) of New Mexico’s Solid Waste Act (“SWA”), and 20.9.9.14 NMAC, for the purpose of addressing the corrective action activities, including requirements concerning groundwater contaminants listed at 20.6.2.3103 NMAC.

12. The Consent Order is intended to provide a framework for regulatory compliance, including corrective actions for releases of hazardous waste or hazardous waste constituents under Sections 3004(u) and (v) and 3008(h) of RCRA, 42 U.S.C. §§ 6924(u) and (v) and 6928(h), Sections 74-4-4(A)(5)(h) and (i), 74-4-4.2(B), and 74-4-10(E) of the HWA, and their implementing regulations at 40 C.F.R. Part 264, subpart F (incorporated by 20.4.1.500 NMAC),

corrective actions for releases of groundwater contaminants listed at 20.6.2.3103 NMAC, toxic pollutants listed at 20.6.2.7.T(2) NMAC, and Explosive Compounds as defined herein, pursuant to Section 74-9-36(D) of the SWA.

13. Pursuant to NMSA 1978, Sections 74-4-10 and 74-4-12 of the HWA, the Respondents are liable for a civil penalty of up to \$10,000.00 per day of noncompliance for each violation described herein.

B. HWA INVESTIGATION

14. In 1947, DOE created Material Disposal Area C (“MDA-C”), Solid Waste Management Unit (“SWMU”) 50-009, at LANL for the disposal of Laboratory-derived waste. MDA-C consists of 115 subsurface disposal units (7 pits and 108 shafts) and is located within the boundaries of Technical Area 50 (“TA-50”). The Consent Order identifies MDA-C, SWMU 50-009, as a SWMU subject to the Consent Order in Appendix A and lists the Material Disposal Area C Remedy Campaign in Appendix C as a Class B Campaign. The depths of the pits at MDA-C range from 12 to 25 feet below the original ground surface, and the depths of the 108 shafts range from 4 to 25 feet below the original ground surface.

15. TA-50 is bounded on the north by Effluent and Mortandad Canyons, on the east by the upper reaches of Ten Site Canyon, on the south by Twomile Canyon, and on the west by TA-55.

16. TA-50 is adjacent to several technical areas including TA-55, TA-63, TA-35, TA-66, and TA-40. Facilities at TA-50 include a radioactive liquid waste treatment facility; a waste characterization, reduction, and repackaging facility (“WCRRF”) (TA-50-69); offices and several storage areas; SMWUs and AOCs; and MDA-C.

17. MDA-C was in operation from 1948 to 1974 and is no longer an active site. Waste disposed of at MDA-C consisted of solid and liquid waste containing hazardous constituents, as well as radioactive waste. Although the management of radioactive waste is not regulated under the HWA, the contamination at MDA-C consists of both hazardous waste constituents and radionuclides and is considered mixed waste subject to NMED regulatory authority under the HWA and corrective action requirements in the Consent Order.

18. The waste disposal records of MDA-C are contained in a series of Los Alamos Scientific Laboratory disposal logbooks. Few data exist on the volume of nonradioactive waste versus radioactive waste disposed of at MDA-C.

19. MDA-C was decommissioned in 1974 and has remained an inactive 11.8-acre landfill consisting of 6 disposal pits, a chemical disposal pit, and 108 shafts since the site was decommissioned.

20. Radionuclide surveys of the soil and vegetation were conducted between 1976 and 1984 and confirmed the presence of radionuclides in localized areas on the surface of MDA-C but stated that most of the data was never published and an evaluation of the analytical quality of the data cannot be completed.

21. An interim action was conducted in 1984 to cover the contaminated soil surface with a new soil cover consisting of 0.5 to 3 feet of topsoil over about 1.5 feet of crushed tuff, which was placed over most of MDA-C with the exception of the northeast corner that was not covered because the region of the site did not contain pits or shafts. However, the Environmental Surveillance of Low-Level Radioactive Waste Management Areas at Los Alamos during 1985¹

¹ Attachment 1 - Environmental Surveillance of Low-Level Radioactive Waste Management Areas at Los Alamos During 1985.

specified that slight reduction in dose in 1985 may be due to the addition of the new cover over the site and indicated in Figure 10 that the footprint of the MDA-C included a perimeter fence.

22. In 1992, the Respondents submitted the RCRA Facility Investigation Work Plan for Operable Unit (OU) 1147² to fulfill the requirements under the RCRA/Hazardous and Solid Waste Amendments Operating Permit that EPA issued to DOE and the University of California in May 1990, which required work plans that constitute 25% of the SWMUs from Table A and 35% from Table B of the Permit. LANL's 1990 SWMU Report lists a total of 11 TA-50 SWMUs that were subdivided into 26 units and were all addressed in the OU 1147 Work Plan. DOE specified that 23 of the subunits are associated with the liquid waste treatment facility, two with the solid waste volume-reduction facilities, and one with the MDA-C landfill. Table B of the HSWA Module lists a soil surface contamination site, 50-006(a), and the MDA-C landfill, 50-009, as priority sites. Respondents specified that the investigative strategy used for TA-50 was based on the ongoing liquid and solid waste treatment activities, particularly with the active and decommissioned underground waste systems, and DOE determined that the logical structure was to deal with the SWMUs/subunits associated with the ongoing activities as one entity and with the remaining SWMU, the MDA-C landfill, as a second entity. As evidence to support EPA approval of this investigative strategy, Respondents provided Figure 2-2, which indicated that the MDA-C landfill is closely adjacent to the SWMUs that were associated with the liquid waste treatment facility, but that the area was fenced and identified to be evaluated separately from the nearby SWMUs and the active facility. Respondents also provided Figure 2-4, which identified the location of active industrial waste lines and manholes at TA-50, specifically those north of the

² Attachment 2 - Resource Conservation and Recovery Act (RCRA) Facility Investigation (RFI) Work Plan for Operable Unit (OU) 1147, May 29, 1992.

MDA-C landfill and in closest proximity to the active facility operations and determined that the industrial waste lines do not have an impact within the footprint of the MDA-C landfill fence line. Additionally, Figure 2-7 identified the location of decommissioned waste lines, manholes and tanks at TA-50 in the same region between MDA-C and the active facility operations occurring adjacent to the landfill and determined that the MDA-C fence line was not impacted by any known decommissioned waste lines.

23. Respondents submitted the Corrective Measures Evaluation Report for MDA-C³ (“2012 CME Report”) on September 28, 2012. In accordance with the provisions in the Consent Order, Respondents can propose a recommended corrective measure alternative for NMED consideration at the conclusion of the evaluation of all applicable potential remedial alternatives. As part of this proposal, DOE proposed a schedule of activities following the submission of the 2012 CME. These proposed corrective actions included (i) NMED issuance of the Statement of Basis and opportunity for a public hearing, (ii) DOE submission of a corrective measures implementation plan within 18 months following the NMED selection of the final remedy, and (iii) DOE implementation of the remedy and the remedy completion report submitted approximately 18 months following the approval of the corrective measures implementation plan. At no point in this process did DOE indicate that corrective action requirements would be impacted by nearby active facility operations, nor did DOE provide evidentiary support to indicate that the footprint of MDA-C is impacted by utilities and other subsurface or surface structures around the vicinity of the fenceline. See Figure 3.2-1.

³ Attachment 3 - Corrective Measures Evaluation Report for Material Disposal Area C, Solid Waste Management Unit 50-009 at Technical Area 50, September 28, 2012.

24. NMED did not issue a Statement of Basis to propose the final remedy based on the evaluation conducted in the 2012 CME Report.

25. On June 30, 2021, DOE submitted the “Corrective Measures Evaluation Report for Material Disposal Area C, Solid Waste Management Unit 50-009, at Technical Area 50, Revision 1⁴” (“2021 CME Report”) and DOE proposed a final remedy for MDA-C, in accordance with Section 16 of the Consent Order. The revised 2021 CME Report included a very similar evaluation of the remedial alternatives and again did not indicate that corrective action requirements may be impacted by any nearby active facility operations. The Respondents, again, proposed a timeline for the completion of the remaining portions of the corrective action process specified in the Consent Order by proposing that NMED prepare a Statement of Basis for the remedy selection and issue a final remedy following the public involvement period. DOE again proposed the submission of the corrective measures implementation plan with 18 months of NMED’s final remedy selection and proposed that implementation of the remedy would take approximately 18 months to complete. DOE stated that throughout the entire CME/CMI process, pore-gas monitoring will continue. Furthermore, this submission also included an updated figure, Figure 3.2-1, identifying the utilities and other subsurface and surface structures around the vicinity of MDA-C, which again indicated that there are no active facility operations impacting the footprint of MDA-C or impacting the fenceline protecting the perimeter of the site.

26. On March 7, 2023, the Respondents submitted a letter⁵ attempting to change the corrective action status for MDA-C using the provisions of the 2016 Consent Order before it was

⁴ Attachment 4 - Corrective Measures Evaluation Report for Material Disposal Area C, Solid Waste Management Unit 50-009, at Technical Area 50, Revision 1.

⁵ Attachment 5 - Change in Status of Material Disposal Area C, Solid Waste Management Unit 50- 009, at Technical Area 50, March 7, 2023. #40313.

modified in 2024. Respondents attempted to justify the change in status by stating that the recent expansion of LANL national security operations in the vicinity of MDA-C resulted in the determination that the corrective action status for SWMU 50-009 should be changed to deferred. Respondents stated that the active facility operations render the site inaccessible for the remediation activities proposed in the 2021 CME Report. Respondents failed to provide any evidentiary support for this request.

27. NMED responded⁶ to the notification for the change of status on March 10, 2023 by stating that MDA-C does not qualify as a deferred site because Respondents' request to defer the site did not follow the provisions of the unmodified 2016 Consent Order which required that the delayed investigation be proposed, and approved by NMED, in any investigation report or investigation work plan. The determination that active facility operations impact that ability to execute the corrective action requirements set forth in the unmodified 2016 Consent Order was not discussed in any investigation work plan or investigation report approved by NMED. Furthermore, Respondents failed to provide evidentiary documentation to support their request to defer MDA-C, which is inconsistent with other sites where Respondents requested NMED approval to change sites to deferred status. As such, NMED stated that this proposed action is contrary to the timeline and recommendations set forth by Respondents in the 2021 CME Report. Furthermore, NMED noted that MDA-C is fenced with public access restricted and that the contamination present in the subsurface has indicated potential concern for risk of exposure to the contamination, and thus, has been subject to periodic vapor-phase contaminant monitoring, following the approved recommendation made by the Respondents in the Phase III Investigation

⁶ Attachment 6 - Response, Change in Status of Material Disposal Area C, Solid Waste Management Unit 50- 009, at Technical Area 50, March 10, 2023.

Report to conduct monitoring until a long-term monitoring plan is developed as part of the corrective measures implementation.

28. On September 7, 2023, NMED issued the Statement of Basis⁷ and proposed the final remedy for corrective action at MDA-C, SWMU 50-009 at TA-50, following the procedures in Section 17 of the Consent Order. NMED proposed the selection of a final remedy that includes the excavation of the buried waste materials for proper disposal at permitted facilities, the removal of the vapor-phase contamination through a soil-vapor extraction system, and institutional controls. As required by the Consent Order, NMED issued the Statement of Basis to facilitate public comment on the proposed final remedy and to allow the opportunity for a public hearing on the matter, if requested.

29. During the 60-day public comment period, NMED received three (3) requests for a public hearing. On November 6, 2023, EM-LA and N3B formally requested a hearing pursuant to Section 17.B of the Consent Order to object to NMED's intended remedy selection. Likewise, Triad also formally requested a hearing on November 6, 2023, pursuant to Section 17.B of the Consent Order to object to NMED's intended remedy selection. Finally, Nuclear Watch also formally requested a hearing pursuant to Section 17.B of the Consent Order to support NMED's intended remedy selection.

30. The matter was docketed as HWB 24-33.

31. The Consent Order was modified⁸ in September 2024, and the modifications included language changes to the deferred sites provisions.

⁷ Attachment 7 – Statement of Basis, Selection of a Remedy for Corrective Action at Material Disposal Area C, SWMU 50-009 at Technical Area 50, Los Alamos National Laboratory. September 7, 2023.

⁸ Attachment 8 – Compliance Order on Consent, U.S. Department of Energy, Los Alamos National Laboratory. Modified September 30, 2024.

32. NMED participated in an informal conference on January 15, 2025, between the hearing requestors to discuss the upcoming public hearing on the proposed final remedy for MDA-C. Negotiations towards resolution with Respondents' formal comments on the Statement of Basis were attempted and the timeline for the public hearing were discussed. Respondents did not identify the inability to execute corrective action requirements based on active facility operations and did not discuss the intent to change the status of MDA-C to deferred.

33. On June 18, 2025, Respondents notified⁹ NMED that the Respondents were deferring corrective action activities for MDA-C pursuant to Section 11 of the 2024 modified Consent Order ("Deferral Notice"). The basis for the deferral was Respondents' determination that MDA-C is "associated with active Facility operations" under Section 11.B.2 of the Consent Order.

34. Section 11 of the Consent Order provides that corrective action activities "shall be Deferred [defined as SWMUs or AOCs for which corrective action activities are suspended due to one of the circumstances specified in Section 11] only for SWMUs and AOCs (1) when the status of the SWMU or AOC is identified in Appendix A as Deferred [which MDA-C was not so identified]; or (2) that satisfy the definition of Deferred Sites and one of the circumstances in Section 11.B . . .". Respondents stated that MDA-C is associated with active Facility operations but provided no reasoning for the status change and did not provide evidentiary support of the active facility operations preventing compliance with the corrective action requirements to justify the status change to deferred.

35. NMED responded to the notification¹⁰ of the deferment on July 2, 2025, by issuing a determination that MDA-C is not eligible to receive a change of status to deferment and that the

⁹ Attachment 9 - 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, June 18, 2025.

¹⁰ Attachment 10 - Response, Deferment of Corrective Action Activities for Solid Waste Management Unit 50-009

notification did not meet the criteria required in the Consent Order. NMED asserted that simply providing notification by means of inclusion on delivery list of the letter does not meet the requirement to confer with appropriate representatives of any municipality, county, or pueblo that share a common border with the Facility to ensure that the proposed deferral action does not potentially affect the priorities of such entity. Furthermore, the notification did not include an assessment of the duration of time the SWMU may be deferred, contrary to the requirement in Section 11.C.1.b.

C. CONSENT ORDER AND HWB 24-33

36. The Consent Order¹¹ addresses corrective action activities at LANL, including but not limited to, corrective action activities at MDA-C. Under the modified 2024 Consent Order, MDA-C was not identified in Appendix A as deferred on the basis that the site was associated with active Facility operations.

37. The Consent Order is an “enforceable document.” An “enforceable document” is defined as “an order, a plan, or other document issued by EPA or by an authorized State under an authority that meets the requirements of 40 CFR § 271.16(e) including, but not limited to, a corrective action order issued by EPA under § 3008(h), a CERCLA remedial action, or a closure or post-closure plan.” 40 CFR Section 270.1(c)(7) (2009).

38. The scope of the Consent Order was to fulfill the requirements for (1) corrective actions for releases of hazardous waste or hazardous waste constituents under Sections 3004(u)

at Material Disposal Area C Under the 2016 Compliance Order on Consent, As Revised in 2024, July 2, 2025.

¹¹ There are several requirements in the Consent Order that maintain consistency with the guidance provided by EPA regarding RCRA corrective action such as the EPA RCRA Corrective Action Plan, OSWER Direction 9902.3-2A (May 1994). Rather than create a rigid regulatory framework from hazardous waste cleanup, EPA developed guidance and policy documents to assist facilities conducting cleanups and to provide a cleanup process that is flexible. Citations to such guidance documents ensure that the corrective action procedures set forth in the Consent Order align with the industry standard RCRA hazardous waste cleanup.

and (v) and 3008(h) of RCRA, 42 U.S.C. Sections 6924(u) and (v) and 6928(h), NMSA 1978, Sections 74-4-4(A)(5)(h) and (i), 74-4-4.2(B), and 74-4-10(E) of the HWA, and their implementing regulations at 40 C.F.R. Part 264, Subpart (F) (incorporated by 20.4.1.500 NMAC); (2) corrective actions for releases of groundwater contamination listed at 20.6.2.3103 NMAC, toxic pollutants listed at 20.6.2.7.T(2) NMAC, and explosive compounds as defined therein, pursuant to section 74-9-36(D) of the Solid Waste Act; (3) groundwater monitoring, groundwater characterization and groundwater corrective action activities, including requirements, for regulated units under Subpart F and for miscellaneous units under Subpart X of 40 C.F.R. Part 264 and 20.4.1.500 NMAC (incorporating 40 CFR Part 264); and (4) additional groundwater information required in Part B permit applications under 40 CFR § 270.14(c) and (d)(3) and 40 CFR § 270.23(b) (incorporated by 20.4.1.900 NMAC). (*see* p. 5, Section 2(C) of the Consent Order).

39. All corrective action for releases of hazardous waste or hazardous constituents at the Facility, required by Sections 3004(u) and (v) and 3008(h) of RCRA, 42 U.S.C. Sections 6924(u) and (v) and 6928(h), NMSA 1978, Sections 74-4-4(A)(5)(h) and (i), 74-4-4.2(B) of the HWA, shall be conducted solely under the Consent Order and not under the current or any future Hazardous Waste Facility Permit (“Permit”), with five exceptions for when actions will be addressed in the Permit and not in the Consent Order.

40. The 2021 CME Report identifies, develops, and evaluates potential corrective measures alternatives for removal, containment, and/or treatment of site-related contamination for MDA-C (p. 50, Section 16 of the Consent Order). The 2021 CME Report focused on remedies based on consideration of site conditions and the extent, nature, and complexity of the releases and contamination. *Id.*

41. Per Section 16.E of the Consent Order, Respondents shall recommend a preferred alternative for remediation in the CME Report and will submit the report to NMED (p. 52, Section 16 of the Consent Order). NMED reviewed the 2021 CME Report and issued a Statement of Basis on September 7, 2023, in accordance with Section 17 of the Consent Order. *Id.*

42. Per Section 17.A “Statement of Basis/Selection of Remedies” of the Consent Order, NMED is required to select the remedy based on the information presented in the 2021 CME Report, data from previous RFI reports, and information provided during the public comment period and/or during the public hearing process. “The remedy that NMED selects must meet the threshold criteria set forth in Section 16.C.1 [of the Consent Order], and NMED must consider Section 16.C.2’s balancing criteria [of the Consent Order], as analyzed by Respondents in the relevant CME Report, as part of its remedy selection” (p. 53, Section 17 of the Consent Order). The Consent Order goes on to say that “NMED may choose, consistent with EPA’s RCRA Corrective Action Plan, OSWER Direction 9902.3-2A (May 1994), a different remedy from that recommended by DOE in the CME Report” (p. 53, Section 17.A of the Consent Order).

43. NMED “will provide an opportunity for a public hearing on the remedy, at which all interested persons will be given a reasonable chance to submit data, views, or arguments orally or in writing and to examine witnesses testifying at the hearing” (p. 53, Section 17.B of the Consent Order).

44. In the 2021 CME Report, Respondents identified five corrective measures alternatives and selected alternative 3(b) as its preferred alternative (pp. 10-13 of NMED’s September 7, 2023 Statement of Basis). This recommended remedy alternative included a permanent evapotranspiration cover over the disposal units and long-term monitoring and maintenance of MDA-C.

45. On July 25, 2025, Respondents sent correspondence to NMED informing them that Respondents were withdrawing the 2021 CME Report for MDA-C based on the deferral, and that a revised CME Report would be submitted when MDA-C is no longer associated with active Facility operations and the site is no longer Deferred.

46. NMED initiated dispute resolution¹² on the change of status for MDA-C on July 28, 2025, based on the evaluation that Respondents failed to comply with the requirements under the Consent Order for deferring a site, and thus, the site was not subject to deferral under Section 11.B.2. NMED's invocation of dispute resolution was regarding the deficiencies in the notification sent by Respondents and the lack of evidentiary support provided to justify Respondents' allegation that MDA-C is associated with active facility operations thereby preventing the execution of corrective action requirements. NMED asserted that the unilateral deferral was contrary to the assertions the Respondents made in the administrative history of MDA-C, which include negotiations between NMED and Respondents regarding revisions to the 2016 Consent Order, which was subsequently modified in 2024. During these negotiations on the 2016 Consent Order, Respondents did not at any point include attempts to modify the status of MDA-C. Specifically, NMED noted that the historical record for MDA-C indicates that the footprint of the site is protected by a perimeter fence and that the ability to execute investigation activities in and around the site have not been impacted by active facility operations since the initiation of corrective action requirements in the early 1990s. In fact, NMED notes that the original split of investigation activities for MDA-C from the other SWMUs in TA-50 in 1990 was made based on the complications the other sites may have with active facility operations and the high priority to

¹² Attachment 11 – Initiation of Dispute Resolution Under Section 25 of the 2016 Compliance Order on Consent (Revised 2024). July 28, 2025.

complete the investigation and remediation of MDA-C. NMED noted that the change of status is contrary to the evidence from historical investigations and that active facility operations impacting the footprint of MDA-C also has the potential to impact the temporary soil cover on the surface, which is used to reduce infiltration into the buried waste. NMED discussed that the Respondents have actively participated in the public hearing process since November 2024 without indicating that MDA-C is associated with active Facility operations. NMED asserted that Respondents have not provided any evidence to support the determination that physical conditions of the site have changed, and thus, do not warrant a designation change of MDA-C to deferred. Furthermore, NMED contended that the withdrawal of the 2021 CME Report was an action to circumvent the cleanup work required by NMED and was contrary to the spirit and terms of the Consent Order. NMED followed the dispute resolution provisions set forth in the Consent Order by initiating dispute resolution pursuant to Section 25 of the Consent Order, with a written notice to the designated agency manager describing the disputed issue, the basis and significance of the dispute, and a proposed resolution. The initiation of dispute resolution included a request to engage in informal negotiations by August 6, 2025.

47. Respondents, however, refused to engage in NMED's request for informal negotiations pursuant to Section 25 of the Consent Order and alleged that this dispute was not subject to informal negotiations pursuant to Section 11(N) of the Consent Order.

48. NMED invoked the dispute resolution procedures based on the technical disagreement with Respondents' determination that MDA-C demonstrates the need to be deferred due to active facility operations. NMED was not disputing the availability of a deferred site for reincorporation into a campaign and, thus, being subject to the Consent Order requirements. Therefore, the exception to the dispute resolution procedures set forth in Section 11(N) do not

apply to the technical issue that was raised by NMED, and the provisions for dispute resolution in Section 25 are applicable. However, following Respondents' refusal to initiate the dispute resolution procedures, NMED is pursuing compliance with the regulatory requirements through the enforceability provisions authorized in the Consent Order. Section 37 of the Consent Order is the Enforceability Section and states that "[if] DOE violates any requirements of this Consent Order, the State's sole remedy for such noncompliance shall be to enforce those requirements pursuant to applicable law...".

49. Rather than engage in informal negotiations under the Consent Order, on August 1, 2025, Respondents filed a Motion to Dismiss the administrative proceeding in docket HWB 24-33, vacate the hearing that Respondents requested on November 6, 2023, and remand the matter for further action pursuant to the Consent Order as a result of Respondents' deferral of MDA-C.

50. On August 25, 2025, NMED filed a Response to Respondents' Motion to Dismiss.

51. On September 4, 2025, Respondents filed a Reply in support of their Motion to Dismiss.

52. On September 11, 2025, NMED filed jointly with Nuclear Watch New Mexico a Joint Request for Oral Argument.

53. On September 12, 2025, Respondents filed a Reply to the Joint Request for Oral Argument

54. On September 22, 2025, NMED and Nuclear Watch New Mexico each filed a Reply in Support of their Joint Request for Oral Argument.

55. On October 9, 2025, the Hearing Officer issued an Order that denied Respondents' Motion to Dismiss, denied the Joint Request for Oral Argument, and stayed the hearing proceedings for HWB 24-33. The Order stated that "[NMED's] recourse in the face of DOE's

determination to place MDA-C in Deferred Status...is through the Dispute Resolution section of the Consent Order, or through its Enforceability provision.”

56. Respondents had denied NMED the dispute resolution process, citing Section 11.N of the Consent Order for their contention that “[d]etermination by DOE about the availability of Deferred Sites, under Section 11, shall not be subject to dispute resolution under Section 25 of this Consent Order.”

57. Section 25.A of the Consent Order states that “[a]ny dispute that arises under this Consent Order shall be subject to the procedures of this Section 25 unless the Consent Order expressly excludes such dispute from dispute resolution. However, the Parties agree to use their best efforts to resolve areas of disagreement and topics of potential dispute through the regular or required coordination among DAMs and designated staff to minimize the need to invoke the procedures set forth in this Section 25.”

58. As discussed in greater detail above in detailing the administrative history between Respondents and NMED, site maps submitted throughout the historical record indicate that the footprint of MDA-C does not implicate ongoing facility operations and is clear of all active facility lines, including gas, electricity, communication, water, or industrial waste lines.

59. Corrective action activities at MDA-C have been ongoing since the early 1980s without indication in the administrative record that active facility operations affect the ability to execute the required cleanup work.

60. There have not been any changes to the character and use of MDA-C since the time that the June 2021 CME was submitted by Respondents that would suggest that the location has since become associated with active facility operations.

61. Respondents did not notify NMED of any “active facility operations” that would cause Respondents to designate MDA-C as deferred at the time the parties executed the 2024 Consent Order and MDA-C was not listed in Appendix A as a deferred site at the time the 2024 Consent Order was executed.

62. NMED is not aware of any “active facility operations” that started after the parties negotiated the 2024 Consent Order that would affect corrective action activities at MDA-C. To this end, Respondents’ 2023 deferment attempt did not include any evidentiary support regarding the specific active facility operations preventing the execution of the required cleanup. The 2025 deferment notification, again, did not address NMED’s concerns that the designation change were attempted without just cause and did not provide the required identification of the circumstance for which the SWMU is being deferred with an assessment of time of the duration of time the SWMU may be deferred. Furthermore, Respondents continued to act contrary to NMED’s determinations made in 2023 regarding the corrective action status of the site and contrary to the requirements set forth in the Consent Order by ignoring NMED’s invocation of dispute resolution on the technical determinations used to justify the deferred status.

63. NMED is aware that national pit production is occurring proximate to the MDA-C location, however, that production has been ongoing since the 1990s, and Respondents have not indicated how MDA-C is associated with this “active facility operation” other than providing speculative information about how corrective action at MDA-C *could* impede work for the national pit production mission or *may* jeopardize the timeline for the pit production *if* NMED’s intended remedy selection for MDA-C is selected.

64. NMED is also aware that MDA-C shares a fence line with LANL’s WCRRF (TA-50-69) and Triad has alleged that MDA-C’s proximity to WCRRF *may* impact activities at

WCRRF, however, these impacts are speculative and MDA-C has shared a fence line with WCRRF since the Consent Order was executed on June 22, 2016.

65. Historically, other than MDA-C, Respondents did provide specific information for why it is deferring a site for corrective action, so NMED can track progress for when circumstances allow a site to be reincorporated back into campaigns for the corrective action to proceed. NMED knows what steps need to occur for every site that Respondents have deferred, other than MDA-C. For example, the following sites in close proximity to MDA-C had the deferred status approved by NMED and included the necessary accompanying information so NMED can track each site's progress for moving out of deferral.

- a. SWMU 50-001(b) is located adjacent to an active nuclear facility and is deferred until the future decontamination and decommissioning of vault 50-002 has been completed.
- b. SWMU 50-002(a) is located inside an active nuclear facility and is deferred until the future decontamination and decommissioning of vault 50-002 has been completed.
- c. SWMU 50-011(a) is a soil contamination site located partially within an active building and investigation is deferred until decontamination and decommissioning of the RLWTF is completed.
- d. SWMU 50-002(b) is an active system and the investigation activities are deferred until the vaulted underground tanks are removed.
- e. AOC 50-010 is deferred because building 50-0001, the RLWTF, is an active facility and characterization of the decontamination building will be deferred until the facility is decommissioned.

66. The above-mentioned list is not exhaustive as there are over 100 deferred sites, however, this list is representative of the type of information that Respondents have historically provided NMED when deferring a site. This information allows NMED to track the status of each site and understand what actions need to occur to remove a site from deferred status.

67. When the parties modified the Consent Order in September 2024, Respondents did not inform NMED that certain activities near MDA-C may impact this site and result in deferred corrective action activities.

68. Additionally, Respondents did not inform NMED of the factors that contributed to Respondents' unilateral attempt to defer MDA-C on July 18, 2025.

69. NMED is unaware of what activities occurred from September 2024 to July 18, 2025, that have contributed to or support Respondents' decision to defer MDA-C at this time. This lack of information impedes NMED's ability to track this site and understand what actions must occur in order to remove MDA-C from deferred status.

70. NMED understands that Section 11(L) of the Consent Order provides Respondents with authority to unilaterally determine when the circumstances for which a site is Deferred no longer exists, however, that does not relieve Respondents with the responsibility to inform NMED of what the circumstances are that have contributed to the deferral and what actions must occur in order to remove a site from deferred status. NMED is concerned that the July 18, 2025, notice of deferment was an attempt to remove the MDA-C from public discourse and the public hearing that was scheduled to begin in late February 2026.

D. VIOLATION

71. **Violation.** Respondents' Deferral Notice did not provide any evidence, explanation or support for the determination that MDA-C is "associated with active Facility operations". This

refusal is a violation of the Consent Order which requires Respondents to provide in its Notice of Deferral the “identification of the circumstance for which [MDA-C] is being Deferred.” (*see* p. 42, Section 11(C)(1)(b) of the Consent Order).

72. NMED received no indication that Respondents met the requirement of Section 11(C)(2) of the Consent Order (*see* p. 42) that Respondents confer with the Four Accord Pueblos and any municipality, county, or pueblo that shares a border with LANL “if such deferral may potentially affect the priorities of the municipality, county, or pueblo and allow them to comment on the deferral”. As far as NMED understands, Respondents only met the requirement of Section 11(C)(1) of the Consent Order (*see* p. 42) by providing a copy of the Notice of Deferral and did not meet the requirement to confer.

73. In addition, the failure to provide NMED the relevant circumstances for the deferral substantially impair NMED’s ability to understand and critically assess the deferral determination and thereby results in the suspension of corrective action activities at MDA-C without any input and comment from NMED. Respondents’ failure to supply sufficient factual information pertaining to the alleged circumstances for which MDA-C is being deferred undermines one or more of the key purposes of the Consent Order, including progress toward and achievement of “tangible, measurable environmental cleanup” at the site (*see* p. 5, Section 2(B)(3) of the Consent Order). If a Site is deferred, Respondents are required to provide annual written updates to NMED to include an explanation of what actions Respondents took to move a Site out of deferred status (*see* p. 43, Section 11(I) of the Consent Order). Moreover, Respondents are required, in Sections 11(C) through 11(E) of the Consent Order, to provide NMED with updated information if there is a changed circumstance or new information that would materially impact the information in in Sections 11(C) through 11(E) of the Consent Order, which would include the Notice of Deferral

(see p. 43, Section 11(J) of the Consent Order). This requirement allows NMED, the State regulatory authority, to accurately track Respondents' progress in attempting to move MDA-C out of deferred status and to fully understand if there are any changed circumstances or new information that would materially impact the information that Respondents provided, including the Notice of Deferral.

74. Due to Respondents' failure to comply with the requirements set forth in Section 11 of the Consent Order, NMED approval is required to change the status of MDA-C to Deferred status (see p. 43, Section 11(F) of the Consent Order, which states that "[w]ith the exception of Section 11.B.4, NMED approval is not required to change the status of a SWMU or AOC to Deferred *provided that DOE complies with the requirements set forth in Section 11.*") (emphasis added).

E. SCHEDULE OF REQUIRED CORRECTIVE ACTIONS

75. Based upon the foregoing findings and conclusions, Respondents are hereby ordered to take the following corrective actions, according to the following schedule, to achieve compliance with the HWA, HWMR, and the Consent Order.

76. No later than 30 days after this Order becomes final, Respondents shall provide with specificity the circumstances for Deferral in response to the violation identified herein. The response shall include all ongoing conditions at MDA-C, including all material changes at the site since the Consent Order was modified in 2024, that would support a determination that MDA-C is associated with ongoing LANL activities and "active facility operations."

77. No later than 30 days after this Order becomes final, Respondents shall provide a formal notification rescinding the withdrawal of the 2021 CME Report. The deferral of corrective actions at MDA-C does not dictate the need to modify actions that have already been completed

regarding the corrective action requirements. Respondents do not have the authority to unilaterally determine that modifications to the 2021 CME Report will be required based on the deferred status designation. Furthermore, Respondents do not have the authority to withdraw a regulatory document to which NMED has already issued a decision on, following the requirements set forth in the Consent Order, and facilitated public input on the proposed final remedy decision. Even if the deferred status change is supported by the supplementary evidence required in this Order, NMED is the regulatory agency that will issue the determination regarding whether the requirements for a final remedy selection have been satisfied. Regulatory action has already been taken on the 2021 CME Report and the change of status to deferred would essentially pause the corrective action process until such time as the conditions requiring the deferral of MDA-C are no longer present. However, pausing the corrective action process does not in and of itself justify the need to withdraw and resubmit the corrective measures evaluation used by NMED to issue the draft regulatory determination for the final remedy of MDA-C in the Statement of Basis. If NMED determines that modifications to either the 2021 CME Report (which was submitted by Respondents to conduct the evaluation of the remedial alternatives as required in the Consent Order) or the Statement of Basis (in which NMED selected a proposed remedy based on that remedial evaluation) are necessary prior to proceeding with the administrative hearing on the matter, NMED will formally notify the Respondents that the submission of an updated corrective measures evaluation report is required.

G. RIGHT TO ANSWER AND REQUEST A HEARING

78. Pursuant to NMSA 1978, Section 74-4-10(H) of the HWA, and NMED's Adjudicatory Procedures, 20.1.5.200 NMAC, Respondents may file a written request for a public

hearing with the Hearing Clerk no later than 30 days from the receipt of this Order. An Answer must be filed with the Request for Hearing. The Answer shall:

- a. Clearly and directly admit, deny, or explain each of the factual allegations contained in this Order with regard to which Respondents have any knowledge. Where Respondents have no knowledge of a particular factual allegation, Respondents shall so state, and Respondents may deny the allegation on that basis. Any allegation of the Order not specifically denied shall be deemed admitted. 20.1.5.200.A(2)(a) NMAC.
- b. Assert any affirmative defenses upon which Respondents intend to rely. Any affirmative defense not asserted in the Answer, except a defense asserting lack of subject matter jurisdiction, shall be deemed waived. 20.1.5.200.A(2)(b) NMAC.
- c. Be signed under oath or affirmation that the information contained therein is, to the best of the signer's knowledge, believed to be true and correct. 20.1.5.200.A(2)(c) NMAC.
- d. Include a copy of this Order attached. 20.1.5.200.A(2)(d) NMAC.

79. The Answer and Request for Hearing shall be filed with the Hearing Clerks at the following email addresses:

Hearing Clerks
New Mexico Environment Department
luis.lopez@env.nm.gov
pamela.jones@env.nm.gov

80. Respondents also must serve a copy of the Request for Hearing on Raymond Romero, Office Manager and Senior Paralegal, Office of General Counsel, New Mexico Environment Department, ray.romero@env.nm.gov.

H. FINALITY OF ORDER

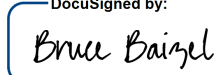
81. This Order shall become final unless Respondents file a Request for Hearing and Answer with the Hearing Clerk within 30 days after the date of receipt of this Order pursuant to NMSA 1978, Section 74-4-10(H).

I. TERMINATION

82. This Order shall terminate when Respondents certify that all requirements of this Order have been met and NMED has approved such certification, or when the Secretary of the Environment approves a settlement agreement and signs a stipulated final order.

J. COMPLIANCE WITH OTHER LAWS

83. Compliance with the requirements of this Order does not remove the obligation to comply with all other applicable laws and regulations.

DocuSigned by:

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Bruce Baizel, Director
New Mexico Environment Department
Compliance and Enforcement Division

DATE: 2/11/2026

CERTIFICATE OF SERVICE


I hereby certify that on 2/11/2026, the foregoing Administrative Compliance Order was emailed and mailed, postage prepaid, via Certified Mail, Return Receipt Requested, to the following:

Theodore Wyka
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DocuSigned by:


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Raymond R. Romero, Senior Paralegal
New Mexico Environment Department