

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

**NEW MEXICO ENVIRONMENT  
DEPARTMENT,**

*Plaintiff,*

v.

**UNITED STATES DEPARTMENT  
OF ENERGY,**

*Defendant.*

**No. 1:21-cv-00278-KG-JFR**

**SETTLEMENT AGREEMENT**

WHEREAS, the New Mexico Environment Department (“NMED”) initiated the present litigation by filing a complaint on February 24, 2021, in the First Judicial District Court, County of Santa Fe, State of New Mexico, alleging that the United States Department of Energy (“DOE”) did not comply with an administrative Compliance Order on Consent, entered into in June 2016 (“2016 Consent Order”), pertaining to the environmental cleanup of legacy hazardous waste located at the Los Alamos National Laboratory (“LANL”);

WHEREAS, DOE removed NMED’s complaint to the United States District Court for the District of New Mexico on March 26, 2021;

WHEREAS, DOE answered NMED’s complaint on May 4, 2021, in which DOE denied that it did not comply with the 2016 Consent Order and also denied that NMED was entitled to the relief it sought in its complaint;

WHEREAS, NMED and DOE (each a “Party” and collectively the “Parties”) jointly moved the Court on October 6, 2021, for a stay of the litigation to enable the Parties to engage in direct

settlement negotiations, which would include discussion of possible revisions to the 2016 Consent Order;

WHEREAS, the Court granted the Parties' request for a stay of the litigation on October 7, 2021, for a period of 90 days;

WHEREAS, the Parties have engaged in ongoing settlement negotiations since this initial stay, requesting, and being granted by the Court, successive stays of the litigation that currently extend through October 7, 2024;

WHEREAS, the Parties desire to resolve the claims alleged by NMED without further litigation;

NOW, THEREFORE, in full settlement of this litigation, and in consideration of the promises and undertakings set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Within thirty (30) days of the execution of this Settlement Agreement by the Parties, each Party shall execute the revised Compliance Order on Consent appended hereto as Attachment A.

2. Within fifteen (15) business days of the execution of the revised Compliance Order on Consent in Attachment A by the Parties, the Parties shall file, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), a joint stipulation of dismissal of the above-entitled litigation with prejudice.

3. Within ninety (90) days after filing of the joint stipulation of dismissal described in Paragraph 2, DOE shall remit \$333,000.00 to NMED for payment to the Hazardous Waste Emergency Fund as established pursuant to NMSA 1978, § 74-4-8.

4. NMED shall complete its review of the requests submitted by DOE to NMED for Certificates of Completion (“COCs”) under Section XXI of the 2016 Consent Order that are listed in Attachment B to this Settlement Agreement, in accordance with the following schedule:

a. NMED shall complete its review of a minimum of fifty (50) of the COC requests listed in Attachment B within ninety (90) days of the execution of the revised Compliance Order on Consent in Attachment A;

b. NMED shall complete its review of a minimum of an additional fifty (50) of the COC requests listed in Attachment B within 180 days of the execution of the revised Compliance Order on Consent in Attachment A;

c. NMED shall complete its review of a minimum of an additional fifty (50) of the COC requests listed in Attachment B within 270 days of the execution of the revised Compliance Order on Consent in Attachment A; and

d. NMED shall complete its review of all COC requests listed in Attachment B within 365 days of the execution of the revised Compliance Order on Consent in Attachment A.

For purposes of this Paragraph 4, NMED shall prioritize completing its review of those requests for Solid Waste Management Units (“SWMUs”) and Areas of Concern (“AOCs”) in the Supplemental Investigation Reports Campaign.

5. For purposes of Paragraph 4, NMED may approve or disapprove requests submitted by DOE to NMED for COCs under Section XXI of the 2016 Consent Order that are listed in Attachment B. NMED may require that DOE provide additional information and/or resubmit documents, provided that NMED’s request for additional information or resubmission is: (a) made

in good faith; (b) based on a specified need; and (c) necessary for NMED to be able to complete its review of COC requests submitted by DOE.

6. The Parties agree to undertake reasonable, good faith efforts to resolve any dispute regarding compliance with Paragraphs 2, 3, 4, and/or 5 of this Settlement Agreement in an amicable manner without further involvement of the Court following the filing of the stipulation of dismissal in Paragraph 2. In the event one Party believes that the other Party is in non-compliance with this Settlement Agreement, the Parties may proceed only as follows:

a. The Party (“Complaining Party”) that believes the other Party is in non-compliance with this Settlement Agreement shall notify the other Party (“Responding Party”) in writing of the specific grounds and facts upon which the Complaining Party alleges non-compliance with identified provisions of this Settlement Agreement. The Responding Party shall respond to the Complaining Party in writing within fifteen (15) business days of receiving the written notice from the Complaining Party. If the Responding Party agrees that it is in non-compliance with this Settlement Agreement, the Parties shall meet and confer within ten (10) business days of the date of the Responding Party’s written response to agree upon a date by which the Responding Party will cure its non-compliance. If the Responding Party does not agree that it is in non-compliance with this Settlement Agreement, the Parties shall meet and confer within ten (10) business days of the date of the Responding Party’s written response in an attempt to resolve the dispute.

b. If, within fifteen (15) business days of the start of the meet-and-confer required under Paragraph 6.a, the Parties are unable to resolve any dispute regarding an allegation of non-compliance with this Settlement Agreement or the date to cure any non-compliance with this Settlement Agreement, the Complaining Party may formally request

non-binding mediation of the Parties' dispute by submitting written notice to the Responding Party. Within fifteen (15) business days of submitting this notification, the Parties will file a joint notice with the Court informing the Court of the dispute and either: (a) request the mediation services of a United States Magistrate Judge for the District of New Mexico; or (b) notify the Court that the Parties will engage a private mediator. The Complaining Party must seek mediation pursuant to this Paragraph 6.b prior to seeking any relief from the Court for alleged non-compliance with this Settlement Agreement. No Party shall be entitled to seek judicial review of an allegation of non-compliance prior to the completion of mediation described herein.

c. If a Party elects to pursue judicial review of the alleged non-compliance with this Settlement Agreement following mediation as provided in Paragraph 6.b, that Party shall notify the other Party in writing within ten (10) business days of conclusion of the mediation related to the alleged non-compliance with this Settlement Agreement. Each Party explicitly reserves, and does not waive, all claims, defenses, and arguments pertaining to any such judicial relief.

d. The Parties acknowledge the procedures of this Paragraph 6 apply only to alleged non-compliance with this Settlement Agreement, and do not apply to any disputes regarding compliance, interpretation, or application of the revised Compliance Order on Consent in Attachment A.

7. The Parties acknowledge and agree that this Settlement Agreement is intended to compromise disputed claims and to avoid litigation, and does not constitute and shall not be construed as an admission of any wrongdoing, noncompliance, or liability on the part of DOE or any contractor acting at DOE's direction.

8. The Parties acknowledge that the obligations imposed on DOE under this Settlement Agreement can only be undertaken using appropriated funds legally available for such purpose. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that DOE obligate or pay funds in contravention of the Antideficiency Act, 31 U.S.C. § 1341, or any other applicable provision of law.

9. The Parties agree that neither Party shall be considered a prevailing party with respect to this litigation.

10. The Parties shall each bear their own costs and fees in connection with this litigation and settlement.

11. Any notice required or made with respect to this Settlement Agreement shall be in writing and effective upon receipt, and shall be sent by U.S. Mail and electronic mail to the Designated Agency Manager (“DAM”) as described in the revised Compliance Order on Consent in Attachment A. Any such notice required or made with respect to this Settlement Agreement shall also be sent by U.S. Mail and electronic mail to the respective attorney of record as follows:

For NMED:

Zachary Ogaz, General Counsel  
Office of General Counsel  
Harold Runnels Building  
1190 St. Francis Dr., Suite N4050  
Santa Fe, NM 87505  
[zachary.ogaz@env.nm.gov](mailto:zachary.ogaz@env.nm.gov)

Robles, Rael & Anaya, P.C.  
20 First Plaza Ctr., Suite 500  
Albuquerque, NM 87102  
[marcus@roblesrael.com](mailto:marcus@roblesrael.com)  
[jnixon@roblesrael.com](mailto:jnixon@roblesrael.com)

For DOE:

Chief, Environmental Defense Section  
U.S. Department of Justice  
Environment and Natural Resources Division  
4 Constitution Square  
150 M Street, NE  
Washington, DC 20002  
[jon.lipshultz@usdoj.gov](mailto:jon.lipshultz@usdoj.gov)

John. H. Evans, Esq.  
U.S. Department of Energy  
Office of Environmental Management  
Los Alamos Field Office  
1200 Trinity Drive, Suite 400  
Los Alamos, NM 87544  
[john.h.evans@em.doe.gov](mailto:john.h.evans@em.doe.gov)

The Parties agree that substitution of the above identified counsel may be made in writing as prescribed by this Paragraph without prior approval by the other Party.

12. This Settlement Agreement constitutes the entire agreement among the Parties as to all claims raised by NMED in this litigation, and supersedes all prior agreements, representations, warranties, statements, promises, covenants, and understandings, whether oral or written, express or implied, with respect to the subject matter hereof.

13. This is an integrated agreement and may not be altered or modified except by a writing signed by all parties in interest at the time of the modification.

14. This Settlement Agreement shall be governed by and construed under the laws of the United States.

15. The Parties expressly understand and agree that this Settlement Agreement was jointly drafted by the Parties, and that any and all rules of construction providing that ambiguity is to be construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

16. Each of the undersigned representatives of the Parties certifies that such individual is authorized by the Party to enter into this Settlement Agreement and to bind such Party to comply with this Settlement Agreement.

17. Each Party to this Settlement Agreement acknowledges that the Party has had the benefit and advice of competent legal counsel with respect to the decision to enter into this Settlement Agreement, and that each Party has read this Settlement Agreement, understands its terms, and intends to be legally bound by it.

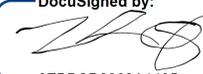
18. This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together constitute one and the same

instrument, and photographic, facsimile, or digital copies of such signed counterparts may be used in lieu of the original. The execution of one counterpart by any Party shall have the same force and effect as if that Party had signed all other counterparts.

19. This Settlement Agreement shall be binding on all successors, assigns, employees, and officers of the Parties.

20. Nothing in this Settlement Agreement shall be construed as making any person or entity not executing this Settlement Agreement a third-party beneficiary to this Settlement Agreement.

**FOR NEW MEXICO ENVIRONMENT DEPARTMENT**

DocuSigned by:  
  
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8/30/2024

Zachary Ogaz, Chief Legal Counsel  
New Mexico Environment Department

Date

**FOR UNITED STATES DEPARTMENT OF ENERGY**

**SUE CHEN**

Digitally signed by SUE CHEN  
Date: 2024.08.30 12:28:35  
-04'00'

Sue Chen  
U.S. Department of Justice  
Environment and Natural Resources Division  
Environmental Defense Section

Date

# **Attachment A**

**STATE OF NEW MEXICO  
ENVIRONMENT DEPARTMENT**

**COMPLIANCE ORDER ON CONSENT  
U.S. DEPARTMENT OF ENERGY  
Los Alamos National Laboratory**

**June 2016**

**(Modified **DATE** 2024)**

# LANL COMPLIANCE ORDER ON CONSENT

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## **SECTION 1.     JURISDICTION**

Each Party enters into this Consent Order pursuant to the following authorities:

A.     The New Mexico Environment Department (NMED) issues this Consent Order to the U.S. Department of Energy (DOE or Respondent) pursuant to Section 74-4-10 of New Mexico's Hazardous Waste Act (HWA). This Consent Order is also issued under Section 74-9-36(D) of New Mexico's Solid Waste Act (SWA) and 20.9.9.14 New Mexico Administrative Code (NMAC), for the limited purpose of addressing the corrective action activities, including requirements, concerning 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. Although DOE consents to SWA jurisdiction for enforcement of the corrective action activities, including requirements, of this Consent Order relating to groundwater contaminants listed at 20.6.2.3103 NMAC, toxic pollutants listed at 20.6.2.7.T(2) NMAC, and Explosive Compounds, DOE otherwise reserves any and all rights, claims, and defenses with respect to the applicability of the requirements of the SWA, including the defenses enumerated in Section 74-9-34.

B.     DOE enters into this Consent Order pursuant to its authorities and responsibilities under the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. § 2011 et seq.

C.     The requirements of this Consent Order do not apply to radionuclides, including source, special nuclear, or byproduct material as defined in the AEA, or the radioactive portion of mixed waste. The requirements of this Consent Order do apply, however, to the hazardous waste component of mixed waste. As stated in Section 1006 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6905, nothing in this Consent Order shall be construed to require DOE to take any action pursuant to RCRA which is inconsistent with the requirements of the AEA, as amended. In the event DOE asserts that it cannot comply with any provisions of this Consent Order under RCRA based on an alleged inconsistency between the requirements of RCRA and the AEA, as amended, it shall provide the basis for the inconsistency assertion in writing. Notwithstanding the foregoing, DOE may voluntarily include in any plan, report or other document submitted pursuant to this Consent Order, including work plans, references to, or information concerning, radionuclides or the radioactive portion of mixed waste. The voluntary inclusion of such radionuclide information by DOE in any plan, report or other document shall not be enforceable by any entity, including the State, under this Consent Order, because such information falls wholly outside the requirements of this Consent Order.

**SECTION 2. PURPOSE AND SCOPE OF CONSENT ORDER**

A. This Consent Order supersedes the 2005 Compliance Order on Consent (2005 Consent Order) and settles any outstanding alleged violations under the 2005 Consent Order.

B. The general purposes of this Consent Order are to:

1. provide a framework for current and future actions to implement regulatory requirements;
2. establish an effective structure for accomplishing work on a priority basis through cleanup Campaigns with achievable milestones and targets;
3. drive toward cost-effective work resulting in tangible, measurable environmental clean-up;
4. minimize the duplication of investigative and analytical work and documentation and ensure the quality of data management;
5. set a structure for the establishment of additional cleanup Campaigns and milestones as new information becomes available and Campaigns are completed;
6. facilitate cooperation, exchange of information, and participation of the Parties;
7. provide for effective public participation; and
8. define and clarify its relationship to other regulatory requirements.

C. Except as provided in Section 7 (Relationship to Permits), the scope of this Consent Order fulfills the requirements for: (1) 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); (2) 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; (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 C.F.R. Part 264); and (4) additional groundwater information required in Part B permit applications under 40 C.F.R. § 270.14(c) and (d)(3) and 40 C.F.R. § 270.23(b) (incorporated by 20.4.1.900 NMAC). The Parties agree that this Consent Order encompasses all scope included within the 2005 Consent Order, including that

which has already been completed and that which has been identified subsequent to the effective date of the 2005 Consent Order.

D. Principles Governing Execution of the Scope / Furtherance of the Purpose:

1. To fulfill the above requirements, this Consent Order sets forth a process for characterizing the nature and extent of Contaminant releases, characterizing the risks to human health and the environment resulting from these releases, and mitigating unacceptable risks. This process includes the planning and implementation of corrective actions and the reporting of results.
2. The corrective action process reflected in this Consent Order replaces the process in the 2005 Consent Order using the following guiding principles:
  - a. Establishing an action-oriented approach to achieve mutually-agreed upon results that makes optimum use of available resources.
  - b. Performing work in a cost-effective and efficient way that provides full protection of human health and the environment.
  - c. Taking advantage of lessons learned both from previous work performed at the Facility and nationally.
  - d. Cooperatively engaging in effective planning of activities.
  - e. Employing a transparent annual planning process.
  - f. Following pertinent risk-informed guidance.
  - g. Conducting collaborative regular, periodic reviews of environmental remediation and clean-up practices.
  - h. Providing flexibility to conduct voluntary corrective actions.
  - i. Reducing the frequency of data collection and reporting where prior results indicate very low or no risk.
  - j. Reducing the volume of paperwork.
  - k. Clarifying commitments and/or requirements for investigation and remediation of constituents not attributable to the Facility or not attributable to a SWMU or AOC covered by this Consent Order.
3. Exclusions from Scope:

This Consent Order imposes no requirements on any SWMUs or AOCs previously investigated by DOE and reviewed and determined by EPA or NMED

to require no further investigation or other action, except as provided for in Section 7.E.

### **SECTION 3. DEFINITIONS**

Unless otherwise expressly provided herein, the terms used in this Consent Order have the meanings set forth in the HWA, RCRA, and their implementing regulations.

A. “Administrative Record” means the administrative record supporting and otherwise relating to the requirements of this Consent Order, compiled as of the effective date of this Consent Order, which forms the basis for the terms of this Consent Order. The Administrative Record includes the full record relating to DOE’s current Hazardous Waste Facility Permit (permit No. NM0890010515), and those documents submitted in writing by NMED, DOE, or the public, as of the effective date of the Consent Order for inclusion in the Administrative Record. The Administrative Record is available for review at NMED’s Hazardous Waste Bureau.

B. “Area of Concern” or “AOC” means any area having a known or suspected release of hazardous waste or hazardous constituents that is not from a solid waste management unit and that the Secretary of NMED has determined may pose a current or potential threat to human health or the environment, pursuant to 20.4.1.500 NMAC (incorporating 40 C.F.R. § 270.32(b) (2)). An area of concern may include buildings and structures at which releases of hazardous waste or constituents were not remediated, including one-time and accidental events.

C. “Area of Contamination” means a discrete area(s) with the potential for generally dispersed contamination located adjacent to or near a SWMU or AOC which may be requested to be part of a SWMU or AOC during corrective action activities.

D. “Atomic Energy Act” or “AEA” means the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2011, et seq.

E. “Campaign Completion Date” means an enforceable deadline for the completion of a Campaign, as more fully described in Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process).

F. “Consent Order” or “Order” means this Compliance Order on Consent, including modifications.

G. “Contaminant” means any hazardous waste listed or identified as characteristic in 40 C.F.R. Part 261 (incorporated by 20.4.1.200 NMAC); any hazardous constituent listed in

40 C.F.R. Part 261, Appendix VIII (incorporated by 20.4.1.200 NMAC) and 40 C.F.R. Part 264, Appendix IX (incorporated by 20.4.1.500 NMAC); any groundwater contaminant listed in the WQCC Regulations at 20.6.2.3103 NMAC; any toxic pollutant listed in the WQCC Regulations at 20.6.2.7.T(2) NMAC; and Explosive Compounds as defined herein. Contaminant does not include radionuclides or the radioactive portion of mixed waste.

H. “Corrective Measures Evaluation” or “CME” means a study or report identifying, developing, and evaluating potential corrective measures alternatives for removal, containment, and/or treatment of site-related contamination and recommending a preferred alternative for remediation of such contamination. A CME performed by DOE is equivalent to a Corrective Measures Study.

I. “Corrective Measures Implementation” or “CMI” means the design, construction, operation, maintenance, and monitoring of the remedy selected following preparation of a CME and Statement of Basis.

J. “Day” means a calendar day, unless specified as a business day. “Business day” means Monday through Friday, excluding all Federal and New Mexico State holidays.

K. “Deferred” or “Deferred Site” means SWMUs or AOCs for which corrective action activities are suspended due to one of the circumstances specified in Section 11.

L. “Designated Agency Manager” or “DAM” means the position designated by each Party to serve as that Party’s representative responsible for coordinating the implementation of this Consent Order.

M. “DOE” means the United States Department of Energy, and any successor departments or agencies.

N. “EPA” means the United States Environmental Protection Agency, and any successor departments or agencies.

O. “Explosive Compounds” means the following chemicals: 2-Amino-4,6-Dinitrotoluene (2-Am-DNT); 4-Amino-2,6-Dinitrotoluene (4-Am-DNT); 2,4-Diamino-6-Nitrotoluene (2,4-DANT); 2,6-Diamino-4-Nitrotoluene (2,6-DANT); 3,5-Dinitroaniline (3,5-DNA); Octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine (HMX); 2-Nitrotoluene (2-NT); 3-Nitrotoluene (3-NT); 4-Nitrotoluene (4-NT); Pentaerythritol tetranitrate (PETN); Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX or Cyclonite); Triaminotrinitrobenzene (TATB); Tris

(o-cresyl) phosphate (TCP); Methyl-2,4,6-trinitrophenylnitramine (Tetryl); 2,4,6-Trinitrotoluene (TNT).

P. “Facility” means the Los Alamos National Laboratory site owned by the United States Department of Energy and located on the Pajarito Plateau in Los Alamos County in North Central New Mexico, comprised of approximately 36 square miles and located approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe.

Q. “Fiscal Year” or “FY” means the Federal fiscal year, which begins October 1st and ends September 30th each year.

R. “Groundwater” means interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply.

S. “HWA” means the New Mexico Hazardous Waste Act, NMSA 1978, §§ 74-4-1 to 74-4-14.

T. “Hazard Index” or “HI” means the sum of more than one Hazard Quotient for multiple Contaminants and / or multiple exposure pathways. The HI is calculated separately for chronic, subchronic, and shorter-duration exposures.

U. “Hazard Quotient” or “HQ” means the ratio of a single substance exposure level over a specified time period (e.g., subchronic) to a reference dose for that substance derived from a similar exposure period.

V. “Hazardous constituent” or “hazardous waste constituent” means any constituent identified in 40 C.F.R. Part 261, Appendix VIII (incorporated by 20.4.1.200 NMAC), and any constituent identified in 40 C.F.R. Part 264, Appendix IX (incorporated by 20.4.1.500 NMAC).

W. “Hazardous Waste” means any solid waste or combination of solid wastes which because of its quantity, concentration, or physical, chemical, or infectious characteristics meets the description set forth in NMSA 1978, § 74-4-3(K), and is listed as a hazardous waste or exhibits a hazardous waste characteristic under 40 C.F.R. Part 261 (incorporated by 20.4.1.200 NMAC).

X. “Hazardous Waste Regulations” means the New Mexico Hazardous Waste Management Regulations, 20.4.1 NMAC.

Y. “Include,” “Including,” and “Includes,” are to be construed as if followed by the phrase “without limitation” or “but not limited to.”

Z. “Interim Measures” or “IM” means actions that can be implemented to reduce or prevent migration of site-related Contaminants which have or may result in an unacceptable human or environmental receptor risk while long-term corrective action activities are evaluated and implemented.

AA. “Maximum Contaminant Level” or “MCL” means a maximum contaminant level adopted by EPA under the Federal Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26, or by the Environmental Improvement Board under the Environmental Improvement Act, NMSA 1978, § 74-1-8(A)(2).

BB. “Milestone” means an enforceable deadline listed in Appendix B for the current FY or forthcoming FY (i.e., FY+1), as more fully described in Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process).

CC. “Mixed Waste” means waste that contains both hazardous waste subject to the HWA and RCRA, and source, special nuclear, or byproduct material subject to the AEA.

DD. “NMED” means the New Mexico Environment Department, and any successor departments or agencies.

EE. “Parties” means collectively NMED and DOE, and the term “Party” shall refer to either of these two entities.

FF. “Permit” means the RCRA Permit issued to DOE for the Facility to operate a hazardous waste treatment and storage facility, EPA ID No. NM0890010515, as it may be modified or amended.

GG. “Presumptive Remedy” means a clear, conservative remedy alternative or preferred technologies for common categories of sites for which DOE, based upon its past experience with remediation and EPA’s scientific and engineering evaluation of performance data on technology implementation, believes, and NMED concurs, there will be no need to prepare a CME pursuant to Section 16. For the purposes of this Consent Order, the most bounding alternative is complete source removal (i.e., complete excavation and cleanup to residential soil screening levels (SSLs)).

HH. “RCRA” means the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 to 6992k, also known as the Solid Waste Disposal Act.

II. “RCRA Facility Investigation” or “RFI” means the investigation(s) conducted to investigate releases or potential releases of site-related Contaminants from SWMUs and AOCs as needed to support the purposes of this Consent Order.

JJ. “Respondent” means the United States Department of Energy.

KK. “SWA” means the New Mexico Solid Waste Act, NMSA 1978, §§ 74-9-1 to 74-9-43.

LL. “Solid Waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1342), or source, special nuclear, or byproduct material as defined by the AEA (42 U.S.C. § 2014).

MM. “Solid Waste Management Unit” or “SWMU” means any discernible unit at which solid waste has been placed at any time, and from which NMED determines there may be a risk of a release of hazardous waste or hazardous waste constituents, irrespective of whether the unit was intended for the management of solid or hazardous waste. Such units include any area at the Facility at which solid wastes have been routinely and systematically released; they do not include one-time spills.

NN. “State of New Mexico” or “State” means the State of New Mexico, including all of its departments, agencies, and instrumentalities.

OO. “Statement of Basis” means a document prepared by NMED based on a CME that describes the basis for NMED’s selection of a remedy.

PP. “Surface Impoundment” means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen material (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

QQ. “Target” means a non-enforceable deadline listed in Appendix B for either of the two forthcoming FYs (i.e., FY+1 and FY+2), as more fully described in Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process).

RR. “Technical Area” or “TA” means an administrative unit of area established to encompass operations at the Facility.

SS. “Trench” means a long, narrow depression or excavation, natural or artificial, in the earth’s surface.

TT. “United States” means the United States of America, including all of its departments, agencies, and instrumentalities.

UU. “WQCC” means the New Mexico Water Quality Control Commission, and any successor agencies, boards, or commissions.

VV. “Water Quality Control Commission (WQCC) Regulations” means the regulations at 20.6.2 NMAC promulgated by the New Mexico Water Quality Control Commission governing the quality of groundwater and surface water in New Mexico.

#### **SECTION 4. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A. FINDINGS OF FACT: For purposes of this Consent Order only, the following constitutes a summary of facts by NMED upon which this Consent Order is based.

1. The Parties

- a. The New Mexico Environment Department is the department within the executive branch of the New Mexico State government charged with administration and enforcement of the HWA, NMSA 1978, §§ 74-4-1 to 74-4-14; the Hazardous Waste Regulations, 20.4.1 NMAC, and the SWA, NMSA 1978, §§ 74-9-1 to 74-9-43.
- b. The Respondent is a department of the United States government, and is the owner and a co-operator of the Facility.

2. The Facility

- a. The Facility, as defined in Section 3.P, is the Los Alamos National Laboratory (LANL) site. The Facility currently comprises approximately 36 square miles (approximately 23,000 acres) and is located on the Pajarito Plateau in Los Alamos County in north central New Mexico, approximately 60 miles north-

northeast of Albuquerque and 25 miles northwest of Santa Fe. At one point during its history, the Facility comprised up to roughly 41 square miles (26,337 acres). The Facility is surrounded by the Pueblo de San Ildefonso, Los Alamos County, Bandelier National Monument, Santa Fe National Forest, and Santa Fe County.

- b. The Pajarito Plateau is dissected by nineteen major surface drainages or canyons and their tributaries. The canyons run roughly west to east or southeast. From north to south, the most prominent canyons are Pueblo Canyon, Los Alamos Canyon, Sandia Canyon, Mortandad Canyon, Pajarito Canyon, Cañon de Valle and Water Canyon, Ancho Canyon, and Chaquehui Canyon. These canyons drain into the Rio Grande, which flows along part of the eastern border of the Facility.
  - c. Hydrogeologic investigations have identified four discrete hydrogeologic zones beneath the Pajarito Plateau on which the Facility is located:
    - (1) canyon alluvial systems;
    - (2) intermediate perched water in the volcanic rocks (Tschicoma Formation and the Tshirege Member of the Bandelier Tuff);
    - (3) canyon-specific intermediate perched water within the Otowi Member of the Bandelier Tuff, Cerros del Rio basalt and sedimentary units of the Puye Formation; and
    - (4) the regional aquifer.
3. Facility Operations
- a. The Facility began operations in 1943 when the United States Army Manhattan Engineer District was established for the development and assembly of an atomic bomb. Current and historical operations have included nuclear weapons design and testing; high explosives research, development, fabrication, and testing; chemical and material science research; electrical research and development; laser design and development; and photographic processing.
  - b. The Facility has been divided into numerous Technical Areas, or “TAs.” Many former TAs have ceased operations, have been combined with other TAs, or were cancelled before becoming operational.

- c. For administration purposes, the Respondent has further categorized some of the areas within the TAs as “Material Disposal Areas” or “MDAs.” These include, for example, MDAs A, B, T, U, and V in TA-21; MDA C in TA-50; MDAs G, H, and L in TA-54.
  - d. Water supply wells at the Facility, in Los Alamos County, and on Pueblo de San Ildefonso property withdraw water from the regional aquifer beneath the Pajarito Plateau.
4. Waste Management
- a. As a result of the Facility operations, from approximately 1943 to the present, the Respondent has generated, treated, stored, disposed of, and otherwise handled solid wastes, including hazardous wastes, hazardous waste constituents, and mixed wastes at the Facility.
  - b. The Respondent has disposed of hazardous wastes, hazardous constituents, and mixed waste at the Facility. In addition, certain groundwater contaminants listed at 20.6.2.3103 NMAC, certain toxic pollutants listed at 20.6.2.7.T(2) NMAC, and certain Explosive Compounds as defined herein, are present in the environment at the Facility. The Respondent has disposed of such wastes in septic systems, pits, surface impoundments, trenches, shafts, landfills, and waste piles at the Facility. The Respondent has also discharged industrial wastewater and other waste from outfalls into many of the canyon systems at the Facility.
5. Releases of Contaminants
- a. Waste management activities at the Facility have resulted in the release of hazardous wastes, hazardous waste constituents, mixed waste, certain groundwater contaminants listed at 20.6.2.3103 NMAC, certain toxic pollutants listed at 20.6.2.7.T(2) NMAC, and certain Explosive Compounds as defined herein.
  - b. Contaminants that have been released into, and detected in, soils and sediments at the Facility include explosives, such as RDX, HMX, TNT; volatile organic compounds and semi-volatile organic compounds; metals, such as arsenic, barium, beryllium, cadmium, chromium, copper, lead,

mercury, molybdenum, silver, and zinc; and polychlorinated biphenyls (PCBs).

- c. Contaminants that have been released into, and detected in, groundwater beneath the Facility include explosives, such as RDX; volatile organic compounds, such as trichloroethylene, dichloroethylene, and dichloroethane; metals, such as molybdenum, manganese, beryllium, lead, cadmium, chromium, and mercury; perchlorate; other inorganic contaminants, such as ammonia, nitrate, and fluoride; and other contaminants. Contaminants have been detected beneath the Facility in all four groundwater zones.
6. Regulatory History of the Facility
- a. On August 13, 1980, the Respondent submitted to the United States Environmental Protection Agency (EPA) a “Notification of Hazardous Waste Activity” for the Facility pursuant to Section 3010(a) of RCRA, 42 U.S.C. § 6930(a).
  - b. By letter dated November 19, 1980, the Respondent submitted to EPA a Part A RCRA permit application for the Facility. The Respondent also sent a copy of the Part A application to the Environmental Improvement Division of the New Mexico Department of Health and Environment, the predecessor to the Environment Department. The application covered hazardous waste treatment, storage, and disposal activities at TA-54, and included some 129 hazardous waste streams. The Respondent has revised the Part A permit application several times since it was first submitted, including, among other things, to notify the State that the Respondent would not seek a permit for hazardous waste disposal activities at the Facility. The Respondent’s most recent Part A permit revision was submitted to NMED in January 2016.
  - c. On January 25, 1985, the State of New Mexico received from EPA authorization to implement its hazardous waste program under the HWA in lieu of the Federal program. 50 Fed. Reg. 1515 (Jan. 11, 1985). Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994, December 21, 1994, July 10,

1995, January 2, 1996, March 10, 1997, June 13, 1998, October 1, 2003, and March 1, 2009. 40 C.F.R. § 272.1601.

- d. On November 8, 1989, NMED's predecessor agency issued a Hazardous Waste Facility Permit (Permit) to the Respondent to operate a hazardous waste treatment and storage facility at the Facility pursuant to Section 74-4-4.2 of the HWA. The Permit covered hazardous waste container storage areas at TA-16, TA-50, and TA-54, hazardous waste storage and treatment tanks at TA-54, and hazardous waste incinerators at TA-16 and TA-50. Two of the four treatment tanks at TA-54 were removed in accordance with an approved closure plan in 1996. NMED approved the closure report in 1997. The remaining two tanks were removed from the site in 2002. NMED approved the closure in 2007. The Respondent closed the incinerator at TA-16 in accordance with an approved closure plan, and NMED approved the Closure Certification Report in October 2001. The Respondent closed the incinerator at TA-50 in accordance with an approved closure plan, and NMED approved the Closure Certification Report in July 1998.
- e. In the late 1980's, the Respondent identified for EPA "Potential Release Sites," including SWMUs and AOCs, where hazardous wastes, hazardous constituents, solid wastes, or mixed wastes may have been disposed. Of those sites, EPA identified over 1200 as sites to be investigated and included on the Hazardous and Solid Waste Amendments (HSWA) portion (known as the "HSWA Module") of the Facility's RCRA permit.
- f. On March 8, 1990, EPA issued to the Respondent the HSWA portion of the Permit, effective on May 23, 1990, covering those requirements of RCRA added by the HSWA of 1984. The EPA portion of the permit required corrective action for continuing releases of hazardous waste and hazardous waste constituents at and from the Facility pursuant to Section 3004(u) and (v) of RCRA, 42 U.S.C. § 6924(u) and (v).
- g. On July 25, 1990, the State of New Mexico received from EPA authorization to expand its hazardous waste program under the HWA in lieu of the Federal

program, including the authority to regulate the hazardous component of mixed waste. 55 Fed. Reg. 28397 (July 11, 1990).

- h. Effective January 2, 1996, the State of New Mexico received from EPA final authorization to implement its corrective action program under the HWA. See 60 Fed. Reg. 53,708 (Oct. 17, 1995); 61 Fed. Reg. 2450 (Jan. 26, 1996).
- i. Between 1995 and 1999, the Respondent submitted a Permit renewal application to NMED for permitted and interim status storage and treatment units at the Facility. The General Part B renewal application was initially submitted in August 1996; the TA-16 application for permitted and interim status units was initially submitted in June 1995; the TA-50 permit application for permitted and interim status units was initially submitted in January 1999; the TA-54 permit application for permitted and interim status units was initially submitted in January 1999; and the TA-55 permit application for interim status units was initially submitted in June 1996. Permit applications for interim status units at TA-3, TA-14, TA-36 and TA-39 were submitted to NMED in or before May 1999.
- j. The Permit, which was originally set to expire in November 1999, was administratively extended pursuant to 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270. 51). The renewed Permit became effective in December 2010.
- k. On June 21, 2011, the Las Conchas wildfire began burning in the Santa Fe National Forest. The fire burned over 150,000 acres and threatened the Facility and the town of Los Alamos. The proximity of the fire to above-ground stored wastes in TA-54 prompted New Mexico Governor Susana Martinez to request that the Respondent prioritize removing non-cemented above-ground wastes. The Respondent agreed to realign waste management priorities.
- l. As a result of the agreed upon realignment of priorities, the Respondent and the State of New Mexico entered into a non-binding Framework Agreement in 2012 that realigned environmental priorities.

- m. In the course of negotiating the 2012 Framework Agreement, the Respondent acknowledged that meeting the milestones of the 2005 Consent Order was difficult, if not impossible, given past and anticipated funding shortfalls. As part of the 2012 Framework Agreement negotiations, the Parties agreed to discuss renegotiation of the 2005 Consent Order at a future date.
  - n. In 2014, the Secretary of DOE directed that DOE's Office of Environmental Management assume oversight of the cleanup at the Facility, which resulted in new and/or additional contractors implementing the work required by this Consent Order on behalf of the Respondent. As a consequence of this change, the contractor that performed the work required by the 2005 Consent Order is no longer included as a Respondent to this Consent Order.
7. Procedural History of Consent Order
- a. On May 2, 2002, pursuant to Sections 74-4-10.1 and 74-4-13 of the HWA, NMED issued a Determination of an Imminent and Substantial Endangerment to Health or the Environment Concerning the Los Alamos National Laboratory (the Determination) to the Respondent and the Regents of the University of California (University), the Facility operator prior to 2006.
  - b. On May 2, 2002, NMED also issued a draft order pursuant to Sections 74-4-10.1 and 74-4-13 of the HWA, called "In Re: Proceeding Under the New Mexico Hazardous Waste Act §§ 74-4-10.1 and 74-4-13" (Draft Order). The Draft Order proposed a series of investigation and corrective action activities for the Respondent and the University to complete at the Facility.
  - c. NMED provided notice and an opportunity to comment on the Draft Order. The comment period extended for ninety (90) days and ended on July 31, 2002. During the public comment period, NMED held four public meetings to provide the public with information on the Draft Order. NMED received comments from 38 persons, including the Respondent, on the Draft Order.
  - d. On June 3, 2002, the University filed a Complaint for Declaratory and Injunctive Relief and for Review of Agency Action in the United States District Court for the District of New Mexico (No. CIV 02-637 MV/DJS) challenging the Determination. On June 3, 2003, the University and the

- United States each filed a Notice of Appeal with the New Mexico Court of Appeals (Ct. App. Nos. 23,172 and 23,173), challenging the Determination.
- e. On October 9, 2002, the United States, on behalf of the Respondent, filed a Complaint in the United States District Court for the District of New Mexico (No. CIV 02-1273-LH/RHS), challenging the September 9, 2002 Installation Work Plan (IWP) Work Schedule issued by NMED. The IWP Work Schedule imposed requirements similar to those contained in the Draft Order.
  - f. On November 26, 2002, NMED issued to the Respondent a Final Order called “Re: Proceeding Under the New Mexico Hazardous Waste Act §§ 74-4-10.1 and 74-4-13” (Final Order). The Final Order contained a set of investigation, monitoring, and corrective action activities and a schedule for implementation of those activities. NMED also responded, in writing, to each of the public comments it had received on the Draft Order. The Determination issued on May 2, 2002 was also withdrawn on November 26, 2002, and the findings and conclusions contained therein were incorporated into the Final Order.
  - g. On December 18, 2002, the University dismissed its Complaint in the United States District Court challenging the Determination because NMED had withdrawn that Determination.
  - h. On December 24, 2002, the United States filed an Amended Complaint, challenging both the 2002 IWP Work Schedule and the Final Order. The United States also filed a Notice of Appeal in the New Mexico Court of Appeals (Ct. App. No. 23,693), challenging the Final Order.
  - i. On December 26, 2002, the University filed a Complaint for Declaratory and Injunctive Relief and for Review of Agency Action in the United States District Court for the District of New Mexico (No. CIV 02-1631 LFG/WDS), challenging the Final Order. On December 26, 2002, the University also filed a Notice of Appeal with the New Mexico Court of Appeals (Ct. App. No. 23,698), challenging the Final Order.
  - j. From December 2002 through December 2003 and from February through March 2004, the Parties engaged in settlement negotiations to resolve the issues raised by the United States’ and the University’s lawsuits. To facilitate

the settlement discussions, the Parties agreed to stay the pending litigation during the settlement process.

- k. On April 25, 2003, NMED issued a Compliance Order HWB 03-02, alleging that the Department of Energy and the University failed to implement interim measures at the Airport Landfill, or SWMU 73-001(a), at the Facility. The Respondent answered the Compliance Order, denying NMED's allegations. That action was also stayed during negotiations of the proposed Consent Order.
- l. On September 1, 2004, NMED released the proposed Consent Order resulting from the settlement negotiations for public review and comment. NMED placed a public notice of the availability of the proposed Consent Order in the local news outlets, and mailed copies of the notice to all interested parties. NMED provided the public with a 30-day period to comment on the proposed Consent Order. The comment period ended on October 1, 2004. NMED received comments from 18 persons on the proposed Consent Order. NMED responded, in writing, to each of those public comments on March 1, 2005.
- m. On March 1, 2005, NMED, the Respondent, and the University, entered into the 2005 Consent Order intended to address cleanup of the Facility. In addition, as a result of those settlement negotiations and the execution of the 2005 Consent Order, NMED agreed to withdraw the Determination, the Final Order, the Airport Landfill Order, and the 2002 IWP Work Schedule, and the United States and the University agreed to dismiss their lawsuits.
- n. The 2005 Consent Order was modified on five occasions between issuance on March 1, 2005 and issuance of this Consent Order. The following draft modifications were issued for public comment prior to incorporation into the Consent Order. On March 1, 2006 and February 23, 2007, the Consent Order schedule was modified. On June 18, 2008, Section IV.A.3.g was added to address notification procedures for certain types of detections of contaminants in groundwater. A modification to address the grouping of wells for the purpose of periodic monitoring and the frequency of submittal of the General Facility Information was completed on April 20, 2012. A modification

requiring the maintenance of a publicly accessible database (Section III.Z) was completed on October 26, 2012.

B. CONCLUSIONS OF LAW: For purposes of this Consent Order only, the following constitutes the conclusions of law by NMED upon which this Consent Order is based.

1. Respondent is a “person” within the meaning of Section 74-4-3(M) of the HWA, and the Hazardous Waste Regulations at 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10), and Section 74-9-3(I) of the SWA.
2. Los Alamos National Laboratory is a “facility” within the meaning of the Hazardous Waste Regulations at 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10).
3. Respondent is an “owner” and an “operator” of the Facility within the meaning of the Hazardous Waste Regulations at 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10).
4. Respondent has engaged in the “storage,” “treatment,” and “disposal” of “hazardous waste” at the Facility, and is currently engaged in the “storage” and “treatment” of “hazardous waste” at the Facility, within the meaning of Section 74-4-3(P), (T), (E), and (K) of the HWA, and the Hazardous Waste Regulations at 20.4.1.100 NMAC (incorporating 40 C.F.R. § 260.10).
5. NMED has determined that hazardous wastes and hazardous waste constituents have been “release[d]” from the Facility into the environment within the meaning of Section 74-4-10(E) of the HWA.
6. Pursuant to Section 74-4-10(A) of the HWA, NMED has determined that the Respondent may have violated 20.4.1.900 NMAC, incorporating by reference 40 C.F.R. § 270.33, Schedule of Compliance.
7. 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 are regulated under the SWA through 20.9.9 NMAC.
8. NMED has determined that there is or has been a release of groundwater contaminants listed at 20.6.2.3103 NMAC, toxic pollutants listed at 20.6.2.7.WW NMAC, and Explosive Compounds as defined herein into the environment

requiring corrective action pursuant to Section 74-9-36(D) of the SWA and 20.9.9.14 NMAC.

**SECTION 5. PARTIES**

A. The Parties to this Consent Order are NMED and DOE.

B. The terms of this Consent Order shall apply to and be binding upon NMED and DOE, their respective agents and employees, and their successors and assigns. DOE may employ contractors for implementation of the work required by this Consent Order. DOE shall require all contractors, subcontractors, laboratories and consultants retained to perform work pursuant to this Consent Order to comply with, and abide by, the terms of this Consent Order. DOE shall hold the contractor(s) accountable through provisions in its contract(s) for the contractor's performance (e.g., missed Milestones) that results in NMED's issuance of stipulated penalties under this Consent Order.

**SECTION 6. WORK ALREADY COMPLETED / SUBMITTED**

A. This Consent Order shall be construed to avoid duplication of work already performed or completed as determined by NMED pursuant to its current HWA authority or by EPA pursuant to its RCRA authority prior to delegation of the RCRA program to the State. Accordingly, all such work that has been completed prior to the effective date of this Consent Order that fulfills the substantive requirements of this Consent Order, and that has been approved by NMED or EPA, in writing, shall be deemed to comply with this Consent Order.

B. With respect to work already performed and for which documentation has been submitted by DOE to NMED pursuant to the 2005 Consent Order and for which NMED has not completed action as of the effective date of this Consent Order, NMED will proceed with timely review of such documentation. Such reviews shall be conducted in accordance with Section 23 (Preparation / Review / Comment on Documents).

**SECTION 7. RELATIONSHIP TO PERMITS**

A. NMED has determined that 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. §§ 6924(u) and (v) and 6928(h), and Sections 74-4-4(A)(5)(h) and (i) and 74-

4-4.2(B) of the HWA, shall be conducted solely under this Consent Order and not under the current or any future Hazardous Waste Facility Permit (“Permit”), with the exception of the following five items which will be addressed in the Permit and not in this Consent Order:

1. New releases and newly discovered releases of hazardous waste or hazardous constituents from hazardous waste management units at the Facility.
2. The closure and post-closure care requirements of 20.4.1.500 NMAC (incorporating 40 C.F.R. Part 264, Subpart G), as they apply to hazardous waste management units at the Facility.
3. Implementation of the controls, including long-term monitoring, for any SWMUs or AOCs listed in the Permit in Attachment K (Listing of SWMUs and AOCs), Table K-2 (Corrective Action Complete with Controls).
4. Any corrective action conducted to address releases of hazardous waste or hazardous constituents that occur or are discovered after the date on which this Consent Order terminates pursuant to Section 38 (Termination).
5. Newly created SWMUs or AOCs from non-permitted operations.

B. Consistent with Section 7.A, the requirements of this Consent Order shall not terminate upon renewal of the Permit issued to DOE. The renewed Permit, and any future modifications, renewals, or reissuance of the Permit, will not include any corrective action activities, or any other requirement that is duplicative of this Consent Order. The Parties agree that Section 7.A is consistent with the intent of the Permit and, further, that any renewed Permit shall include the five excepted items described in Section 7.A.

C. The Parties enter into this Consent Order based on their understanding that this Consent Order shall be the only enforceable instrument for corrective action relating to the Facility, except for those items listed in Sections 7.A.1 through 7.A.5, which shall be subject only to the Permit. For the purposes of any enforcement action taken by the State or any third party, other than the items listed in Sections 7.A.1 through 7.A.5, NMED has determined that compliance with the terms of this Consent Order constitutes compliance with the requirements for corrective action under RCRA and the HWA and their implementing regulations, including Sections 3004(u) and (v) and 3008(h) of RCRA, 42 U.S.C. §§ 6924(u) and (v) and 6928(h), 40 C.F.R. Part 264, Subpart F, Sections 74-4-4.2(B) and 74-4-4(A)(5)(h) and (i) of the HWA and section 20.4.1.500 NMAC (incorporating 40 C.F.R. Part 264, Subpart F). Upon the effective date

of this Consent Order, the sole mechanism for enforcing corrective action activities relating to the Facility, except as provided in Sections 7.A.1 through -7.A.5, shall be this Consent Order. The State will not take any action to enforce the corrective action requirements of the existing Permit, except as to those items listed in Section 7.A. This Consent Order is an “enforceable document” pursuant to the requirements of 40 C.F.R. § 264.101.

D. Consistent with Sections 7.A through 7.C, the Parties agree that the status of SWMUs and AOCs will be tracked under this Consent Order until Termination of this Consent Order. The Permit will not be updated while this Consent Order is in effect with information about the status of SWMUs and AOCs currently listed in the Consent Order except for SWMUs and/or AOCs for which DOE has been granted a permit modification for corrective action complete status.

E. Consistent with Section 21 (Certification of Completion of Corrective Action), NMED’s determination that corrective action is complete for a SWMU or AOC placed on either the corrective action complete with controls list or the corrective action complete without controls list will be subject to the State’s reservation of rights for new information. During the duration of this Consent Order, if NMED seeks to require additional work at any SWMU or AOC contained on either of the two lists for corrective action complete, NMED will initiate a permit modification to remove the SWMU or AOC from such list.

F. Upon Termination of this Consent Order pursuant to Section 38, any SWMUs and/or AOCs where corrective action is not complete will be addressed under the Permit in accordance with the regulations at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42), 20.4.1.901 NMAC, and 20.4.1.902 NMAC, including opportunities for public participation (such as public notice and comment, administrative hearings, and judicial appeals).

G. The Parties agree that the rights, procedures and other protections set forth at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42), 20.4.1.901 NMAC, and 20.4.1.902 NMAC, including opportunities for public participation (such as public notice and comment, administrative hearings, and judicial appeals) do not apply to modification of the Consent Order itself.

H. This Consent Order shall establish no requirements for releases of Contaminants from SWMUs or AOCs to storm water runoff that:

1. Are permitted under DOE's National Pollutant Discharge Elimination System (NPDES) Individual Permit for storm water discharges from SWMUs and AOCs (Individual Permit) (NM0030759 or as reissued); or
2. Are from SWMUs or AOCs that DOE and EPA have determined did not require coverage under the Individual Permit (i.e., SWMUs and AOCs that were not exposed to storm water, did not contain significant industrial materials, and/or did not potentially impact surface water); or
3. Are from SWMUs or AOCs formerly permitted under the Individual Permit that were deleted from the Individual Permit.

I. For SWMUs or AOCs that are permitted under the Individual Permit, DOE may identify and implement corrective action activities pursuant to this Consent Order that address requirements of both this Consent Order and the Individual Permit. NMED's review and approval of such corrective actions shall be limited to those elements of the corrective action that specifically address requirements of this Consent Order.

**SECTION 8. CAMPAIGNS, FIVE-YEAR SCHEDULES, AND ANNUAL PLANNING PROCESS**

- A. Campaign Organization (Appendix C)
1. Organization and Prioritization of Campaigns: Corrective action activities conducted under this Consent Order are organized into Campaigns using a risk-based approach to grouping, prioritizing, and accomplishing such activities at SWMUs and AOCs. A Campaign may consist of one or more projects, and projects may consist of one or more tasks and deliverables. Campaigns, projects, tasks, and deliverables may be subject to Milestones.
  2. Corrective Action Activities for SWMUs and AOCs in Campaigns: Each Campaign may address corrective action activities for zero (in the case of groundwater plumes), one, or more SWMUs or AOCs.
  3. Completion of Corrective Action Activities for Campaigns: The Parties intend Campaigns to capture the corrective action activities needed to certify completion of corrective actions in accordance with Section 21 (Certification of Completion

of Corrective Action). However, it may be appropriate for one or more Campaigns to be implemented in phases (e.g., interim measures).

4. Campaign Classifications: Campaigns are classified as either: (a) Class A Campaigns; or (b) Class B Campaigns. Class A Campaigns are those Campaigns in which the Parties agree that Campaign Completion Dates can be established. Class B Campaigns are those Campaigns for which the Parties agree that Campaign Completion Dates cannot yet be established due to the status of corrective action activities, as well as new Campaigns established per Sections 2.B.5 and 8.C. Class B Campaigns may be reclassified as Class A Campaigns pursuant to the process specified in Section 8.B.2. The designation of a Campaign as Class A or Class B does not reflect the priority of that Campaign or the Campaign's status in the corrective action process.
5. Campaign Descriptions and Ordering: Campaigns are listed and described in Appendix C (Campaigns), including: (a) which Campaigns are Class A Campaigns and Class B Campaigns; (b) a five-year schedule for each Class A Campaign (after the five-year schedule has been established pursuant to Section 8.B.1); (c) Campaign Completion Dates (after a Campaign Completion Date has been established pursuant to Section 8.B; and (d) an explanation for the ordering of that Campaign. The ordering of Campaigns in Appendix C reflects a sequence that implements corrective action activities on a risk-based approach, which may take into account various factors, including priorities, resources, and geography, pursuant to Section 8.F.4. The ordering of Campaigns in Appendix C is subject to change pursuant to Section 8.F.4. If changes to the ordering of Campaigns potentially affect the priorities of any municipality, or county, or pueblo that shares a common border with the Facility, as well as the Four Accord Pueblos (Cochiti Pueblo, Pueblo de San Ildefonso, Santa Clara Pueblo, and Jemez Pueblo), the Parties must confer with appropriate representatives of such municipalities, counties, and pueblos and allow them to comment on the new proposed ordering of Campaigns. Comments from such municipalities, counties, and pueblos will be considered when modifying the ordering of Campaigns.

6. Campaign Completion Dates In Lieu of an Overall Completion Date: Numerous factors affect the timing of corrective action activities under this Consent Order. Such factors include: inherent uncertainties, complexities involved in the scope and nature of the cleanup, public participation processes (see Section 34), funding uncertainties, the RCRA corrective action process, and requisite regulatory approvals. Accordingly, the Parties acknowledge that they are unable to establish an overall completion date for all Campaigns under this Consent Order at this time, and instead have developed the process for establishing Campaign Completion Dates for individual Campaigns. The overall completion date will be the Campaign Completion Date of the last Campaign to be completed.

B. Five-Year Schedules

1. Class A Campaigns

- a. For each Class A Campaign, the Parties will establish a five-year schedule (which consists of projects, tasks, or deliverables).
- b. Based on the five-year schedule, the Parties will, for each Class A Campaign, agree to: (i) Milestones; and (ii) a Campaign Completion Date.
- c. The Parties will agree to Milestones for Class A Campaigns during the annual planning process.
- d. Milestones for Class A Campaigns will be established for the current FY and forthcoming FY (i.e., FY and FY+1).
- e. Milestones and Campaign Completion Dates are enforceable and subject to stipulated penalties pursuant to Section 36.

2. Class B Campaigns

- a. The Parties will agree to Milestones for Class B Campaigns during the annual planning process.
- b. Milestones for Class B Campaigns will be established for the current FY.
- c. Milestones are enforceable and subject to stipulated penalties pursuant to Section 36.
- d. The Parties may agree to Targets for no more than two years beyond the current FY (i.e., FY+1 and FY+2). Any such Targets: (i) would be selected

during the annual planning process in Section 8.F; and (ii) will not automatically become Milestones.

- e. Except for the TA 21 D&D and Cleanup Campaign, each Class B Campaign shall be reclassified as a Class A Campaign upon the approval by NMED of the CMI Plan for that Campaign.
- f. For the TA-21 D&D and Cleanup Campaign, the Campaign shall be reclassified as a Class A Campaign after all deactivation and decommissioning work for this Campaign is completed.
- g. For any new Campaigns established per Sections 2.B.5 and 8.C, the Parties shall determine whether the Campaign will be classified as Class A or Class B.
- h. Once a Class B Campaign is reclassified as a Class A Campaign, the provisions in Section 8.B.1 apply to that Campaign.

C. Listing of SWMUs and AOCs (Appendix A)

- 1. Appendix A (Solid Waste Management Unit/Area of Concern List) contains a list of SWMUs and AOCs subject to this Consent Order. For each SWMU and AOC in Appendix A, the following information is included: (a) status of corrective action activities; (b) the Campaign to which the SWMU and AOC is assigned; and (c) the date NMED issued a Certificate of Completion (if applicable).
- 2. The Parties will update Appendix A during the annual planning process detailed in Section 8.F. Such updates will include the addition of SWMUs and AOCs pursuant to Section 10 (Newly Discovered Releases), status changes in corrective action activities, reassignment to different Campaigns, or NMED's issuance of a Certificate of Completion.
- 3. Each SWMU or AOC may not proceed through each status category of corrective action activities. The categories below will be used, as appropriate, for the status of corrective action activities:
  - a. Pre-Investigation
  - b. RFI or Field Work in Progress (includes Interim Measures, Accelerated Corrective Action)
  - c. RFI or Field Work Reports submitted to NMED

- d. CME in Progress
  - e. CME submitted to NMED
  - f. CMI in Progress
  - g. CMI Reports submitted to NMED
  - h. Request for Certificate of Completion submitted to NMED
  - i. Certificate of Completion with controls or without controls issued by NMED
  - j. Deferred
4. Appendix A will also include summary tables that detail: (a) the number of SWMUs and AOCs in each status category of corrective action activities; (b) the number of SWMUs and AOCs in each Campaign; and (c) the number of SWMUs and AOCs that are Deferred.
- D. Milestones (Appendix B)
- 1. Appendix B (Milestones) contains a list of Milestones for Campaigns. Milestones are for projects, tasks, or deliverables that substantially contribute to completion of the Campaigns (e.g., not progress reports). Milestones: (a) represent only a portion of corrective action activities for a Campaign; (b) are intended to demonstrate progress on a Campaign; (c) provide an accountability mechanism in the event that they are not met by certain dates agreed to by the Parties; and (d) do not constitute all deliverables submitted by DOE to NMED for a Campaign. A Milestone is not required for each Campaign each FY.
  - 2. For Milestones that do not require submission of deliverables to NMED, the Parties agree to define validation mechanisms for such Milestones (i.e., agreed upon proof that the Milestone has been completed) in Appendix B as part of the annual planning process pursuant to Section 8.F. Validation mechanisms also shall specify the timeframe by which NMED must provide written certification that the Milestone has been completed.
  - 3. The Parties may specify in Appendix B explicit key assumptions, if any, underlying any Milestone. If any of these key assumptions proves to be incorrect, then the Parties may agree to a new date for the affected Milestone and Campaign Completion Date (as applicable).

4. Unless otherwise agreed to by the Parties during the annual planning process in Section 8.F there will be no more than twelve (12) Milestones in a FY for all Campaigns.

E. Campaign Completion

1. Campaign Completion Dates may extend beyond the five-year schedule established pursuant to Section 8.B. In such circumstances, DOE will develop successive or rolling five-year schedules (that will provide the basis for applicable Milestones) until the Campaign Completion Date is within the five-year schedule.
2. The Parties may specify explicit key assumptions, if any, underlying any Campaign Completion Date in Appendix C. If any of these key assumptions proves to be incorrect, then the Parties may agree to a new date for the affected Campaign Completion Date.
3. Upon completion of corrective action activities for a Campaign, DOE will submit a Campaign Completion Letter to NMED affirming that DOE has completed the corrective action activities for that Campaign.
4. Within 30 days of receiving a Campaign Completion Letter submitted pursuant to Section 8.E.3, NMED will concur or not concur that corrective action activities are complete for that Campaign.
  - a. If NMED concurs that corrective action activities are complete for that Campaign, then the Campaign is complete as of the date DOE submitted the Campaign Completion Letter to NMED.
  - b. If NMED does not concur that corrective action activities are complete for that Campaign, NMED will provide written comments to DOE that identify the reasons for why NMED does not concur, including additional corrective action activities that are necessary.
    - i. In such event, this does not constitute failure by DOE to meet the Campaign Completion Date.
    - ii. The Parties will: (1) agree on a new schedule and a new Campaign Completion Date to address remaining activities; and (2) follow the procedures, as applicable, set forth in Section 8.B to establish Milestones for that Campaign.

- c. If within 30 days of receiving a Campaign Completion Letter submitted pursuant to Section 8.E.3 NMED fails to concur (per Section 8.E.4.a) or not concur (per Section 8.E.4.b), then NMED shall notify DOE in writing within 10 business days after that deadline that NMED did not meet the timeframe. NMED's written notice to DOE shall: (1) state the reasons why NMED did not meet the timeframe; (2) provide a new deadline by which NMED will complete its review of the Campaign Completion Letter; (3) include the Secretary of NMED's written grant of an extension of time for good cause shown as an enclosure; and (4) state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframe in the future.
  - i. The new deadline by which NMED proposes to complete its review of the Campaign Completion Letter in NMED's written notice shall be subject to, and limited in duration by, the Secretary of NMED's grant (if any) of an extension of time for good cause shown, but in no event shall the extension be for more than 30 days.
  - ii. Within 15 business days of sending the written notice to DOE that NMED did not meet the timeframe to review the Campaign Completion Letter set forth in Section 8.E.4, NMED shall post the written notice on its website.
  - iii. In the annual public meeting jointly held by DOE and NMED pursuant to Section 34.A.3, NMED shall: (1) discuss all instances during the prior FY in which NMED did not review Campaign Completion Letters in accordance with Section 8.E.4; and (2) state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframe in the future.
- d. Stipulated penalties shall not accrue during NMED's review of the Campaign Completion Letter pursuant to Section 8.E.4.
- e. If NMED either:
  - i. Does not receive an extension from the Secretary of NMED pursuant to Section 8.E.4.c and does not complete its review of the Campaign Completion Letter within the original timeframe set forth in Section 8.E.4, or

- ii. Does receive an extension from the Secretary of NMED pursuant to Section 8.E.4.c and does not complete its review of the Campaign Completion Letter within the extended timeframe set forth in Section 8.E.4.c,

then NMED shall award DOE a credit equivalent to the amount of stipulated penalties that DOE would be obligated to pay to NMED for a delinquent Campaign Completion Date under Section 36.A.6 for each day beyond the applicable deadline that NMED fails to complete its review of the Campaign Completion Letter. Such credit may then be used by DOE to offset any future stipulated penalties it may incur under this Consent Order or other fees that DOE may owe to NMED.

- f. Section 8.E.4.b does not apply if DOE submits a Campaign Completion Letter after DOE: (a) received written communication from NMED that a specific corrective action activity was required for that Campaign; (b) agreed that the specific activity was necessary; and (c) did not perform that specific activity consistent with agreed upon criteria.

F. Annual Planning Process

- 1. The annual planning process is the process the Parties use to update Appendix A, Appendix B, and Appendix C (as appropriate). Except for any additional procedures specified explicitly in Section 8.F., public input on proposed and adopted changes to Appendices A, B, and C will occur pursuant to Section 34.A.2.
- 2. Appendix A
  - a. In the first quarter of each FY, DOE will provide a proposed revision of Appendix A to NMED. This revision will update the information specified in Section 8.C.2. NMED will review DOE's proposed revision and, if the revision is acceptable to NMED, the revision will be incorporated into this Consent Order as Appendix A. If the proposed revision is not acceptable to NMED, then the Parties agree that the DAMs will meet within fifteen (15) business days to resolve NMED's concerns.



appropriation via continuing resolution), the DAMs shall meet to discuss the appropriation and whether revisions to the proposed Appendix B are necessary.

- i. If DOE determines that revisions to its proposal submitted pursuant to Section 8.F.3.a. are necessary, then within fifteen (15) business days after this meeting, DOE will provide an amended proposed revision of Appendix B to NMED based on the appropriation. NMED will review DOE's amended proposed revision within fifteen (15) business days of receipt. If the amended proposed revision of Appendix B is acceptable to NMED, then the revision shall be incorporated into this Consent Order as Appendix B. If the amended proposed revision of Appendix B is not acceptable to NMED, then the Parties agree that the DAMs will meet within fifteen (15) business days to resolve NMED's concerns.
- ii. If DOE determines that no revisions to its proposal submitted pursuant to Section 8.F.3.a. are necessary, then NMED will review DOE's proposed revision submitted pursuant to Section 8.F.3.a within fifteen (15) business days of the DAMs' meeting. If the proposed revision is acceptable to NMED, then the revision shall be incorporated into this Consent Order as Appendix B. If the proposed revision of Appendix B is not acceptable to NMED, then the Parties agree that the DAMs will meet within fifteen (15) business days to resolve NMED's concerns.
- c. In addition to the process specified in Section 8.F.3.a–b, at any time either Party may request a meeting of the DAMs to discuss proposed revisions to Appendix B based on factors including work progress, changed conditions involving the Facility, new information (e.g., sampling or monitoring results), changes in funding levels, or assumptions that prove to be incorrect. If, as a result of this meeting the Parties determine that Appendix B should be revised, then DOE may submit a proposed revision of Appendix B to NMED. Within fifteen (15) business days of NMED's receipt of this proposed revision, NMED will review DOE's proposed revision and, if the revision is acceptable to NMED, the revision will be incorporated into this Consent

Order as Appendix B. If the proposed revision of Appendix B is not acceptable to NMED, then the Parties agree that the DAMs will meet within fifteen (15) business days to resolve NMED's concerns.

- d. Upon finalizing Appendix B, the Parties will each post the revised Appendix B to their respective websites, including a redline reflecting changes made to the prior version of Appendix B.
  - e. After posting the revised Appendix B to their respective website, the Parties will host a public meeting pursuant to Section 34 to inform the public of changes to Appendix B.
4. Appendix C
- a. In the first quarter of each FY, DOE may provide (as appropriate) a proposed revision of Appendix C to NMED. This revision will update the information specified in Section 8.A.5. NMED will review DOE's proposed revision and, if the revision is acceptable to NMED, the revision will be incorporated into this Consent Order as Appendix C. If the proposed revision is not acceptable to NMED, then the Parties agree that the DAMs will meet within fifteen (15) business days to resolve NMED's concerns.
  - b. In addition to the process specified in Section 8.F.4.a, at any time either Party may request a meeting of the DAMs to discuss proposed revisions to Appendix C based on factors including work progress, changed conditions involving the Facility, or new information (e.g., sampling or monitoring results). If, as a result of this meeting the Parties determine that Appendix C should be revised, then DOE may submit a proposed revision of Appendix C to NMED. Within fifteen (15) business days of NMED's receipt of this proposed revision, NMED will review DOE's proposed revision and, if the revision is acceptable to NMED, the revision will be incorporated into this Consent Order as Appendix C. If the proposed revision of Appendix C is not acceptable to NMED, then the Parties agree that the DAMs will meet within fifteen (15) business days to resolve NMED's concerns.
  - c. Upon finalizing Appendix C, the Parties will each post the revised Appendix C to their respective websites.

**SECTION 9. CLEANUP OBJECTIVES AND CLEANUP LEVELS**

A. Corrective actions shall be conducted under this Consent Order so that contamination due to releases from SWMUs and AOCs does not result in unacceptable risk to human health and ecological receptors based on current and reasonably foreseeable land use.

B. For human health, NMED has established target risk levels of  $10^{-5}$  lifetime excess cancer risk for carcinogenic Contaminants and a hazard index (HI) of 1 for non-carcinogenic Contaminants. NMED's target risk levels for protection of human health are based on lifetime excess cancer risk levels and non-cancer hazard index levels that are consistent with EPA's National Oil and Hazardous Substance Pollution Contingency Plan, 40 C.F.R. § 300.430(e)(2)(i)(A)(2). As stated in NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate), these target risk and hazard index levels are used to determine whether site-related contamination poses an unacceptable risk to human health and requires corrective action or whether implemented corrective actions sufficiently protect human health and the environment. In the event that NMED updates its *Risk Assessment Guidance for Site Investigations and Remediation*, the Parties will meet to discuss any changes in updated guidance that may impact corrective action activities.

C. The corrective action process employs both screening levels and cleanup levels. Screening levels are Contaminant concentrations that indicate the potential for unacceptable risk. If Contaminants are present at concentrations above screening levels, it does not necessarily indicate that cleanup is required, but it does indicate that additional risk evaluation is needed to determine the potential need for cleanup. Cleanup levels are the Contaminant concentrations that indicate when cleanup objectives are met. The need for cleanup is triggered by potential unacceptable risk and not by exceedance of screening levels. DOE shall define the use of screening levels and cleanup levels at a site through the Data Quality Objectives developed during Facility Investigation (Section 13) and media cleanup objectives developed during Corrective Measures Evaluation (Section 16).

D. NMED has developed soil screening levels (SSLs) based on target risk levels of  $10^{-5}$  lifetime excess cancer risk for carcinogenic Contaminants and for non-carcinogenic Contaminants a target HI of 1. These SSLs are listed in NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate). NMED's SSLs are used to indicate the potential for site-related contamination to be present in soils at levels that could

result in human health risk above NMED cleanup goals. NMED's SSLs are based on conservative exposure assumptions for several exposure scenarios (e.g., residential, industrial, and construction worker). NMED also reviews and accepts DOE's recreational SSLs. Based on reasonable and foreseeable future land use, DOE shall use NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate) to determine whether or not a site meets acceptable risk.

E. DOE may use NMED's SSLs as soil cleanup levels to demonstrate that additional corrective action is not needed. If NMED has not developed SSLs for a particular Contaminant, DOE may use SSLs for that Contaminant developed by EPA. Alternatively, instead of using SSLs as cleanup levels, DOE may calculate site-specific risk-based soil cleanup levels based on site-specific exposure parameters in accordance with NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate). NMED must approve site-specific cleanup levels proposed by DOE.

F. NMED has developed tap water screening levels for drinking water based on the target risk levels of  $10^{-5}$  lifetime excess cancer risk for carcinogenic Contaminants and non-carcinogenic HI of 1. These screening levels are listed in NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate). NMED's tap water screening levels are used to indicate the potential for site contamination present in drinking water to result in human health risk above NMED cleanup objectives. NMED's tap water screening levels shall be used as groundwater screening levels for protection of human health if groundwater is a current or reasonably foreseeable source of drinking water. If NMED has not developed tap water screening levels for a particular Contaminant, DOE may use tap water screening levels for that Contaminant developed by EPA adjusted to  $10^{-5}$  cancer risk for carcinogens.

G. Groundwater cleanup levels shall be established in accordance with EPA's *Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action* (2004 or as updated). Consistent with EPA's Handbook, groundwater cleanup levels shall be based on the maximum beneficial use of the groundwater to ensure protection of human health. For protection of human health and the environment, groundwater cleanup levels shall be based on existing standards (e.g., drinking water standards) when they are available and when using them is protective of current and reasonably expected exposures. Applicable standards for use as cleanup

standards for protection of human health are the WQCC groundwater standards, including alternative abatement standards (20.6.2.4103 NMAC), and the drinking water maximum contaminant levels (MCLs) adopted by EPA under the Federal Safe Drinking Water Act (42 U.S.C. §§ 300f to 300j-26) or the New Mexico Environmental Improvement Board (20.7.10 NMAC). If both a WQCC standard and an MCL have been established for an individual substance, then the lower of the two levels will be considered the cleanup level for that substance. If no WQCC groundwater standard or MCL has been established for a Contaminant for which toxicological information is published, DOE shall use a target risk level of  $10^{-5}$  lifetime excess cancer risk for carcinogenic Contaminants and/or non-carcinogenic HI of 1 as the basis for developing a cleanup level for the Contaminant.

H. Surface water screening levels shall be used to evaluate the potential for unacceptable risk due to release of site-related Contaminants to surface waters other than from permitted discharges. Release of Contaminants from SWMUs and AOCs to storm water runoff is regulated by DOE's National Pollutant Discharge Elimination System (NPDES) Individual Permit (NM0030759) (Individual Permit). Discharge of site-related Contaminants from SWMUs and AOCs to surface waters may also be permitted under the NPDES Multi-Sector General Permit, the NPDES Construction General Permit, or DOE's NPDES Industrial and Sanitary Permit. This Consent Order shall not establish screening levels or cleanup levels for Contaminants in storm water. Applicable New Mexico Water Quality Standards for Interstate and Intrastate Surface Waters (20.6.4 NMAC) shall be used as screening levels for surface water.

I. If investigation results indicate human health risk in excess of cleanup objectives due to release of site-related Contaminants to surface water, other than from permitted discharges, DOE may develop site-specific surface water cleanup levels. Cleanup levels for protection of human health for surface water shall be developed in accordance with EPA's *Risk Assessment Guidance for Superfund (RAGS), Volume I, Part A* (1989 or as updated).

J. Screening for ecological risk shall be conducted using the Facility's Ecological Screening Levels (LANL ESLs) which are included in LANL's Ecorisk Database (2015 or as updated). In the absence of LANL ESLs, DOE may use NMED's Ecological Screening Levels (NMED ESLs) included in NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate). If the LANL Ecorisk Database or NMED's ESLs do not contain a screening value for the receptor or Contaminant, DOE shall derive a screening

level using the methodology in the Facility's *Screening Level Ecological Risk Assessment Methods* (2012 or as updated) provided toxicity information is available either online or in the peer reviewed literature. If valid toxicity information for a Contaminant is not available, DOE may evaluate potential ecological risk using ESLs for surrogate chemicals based on structural similarities or qualitatively if a surrogate with ESLs is not available. In the event that either Party updates its ecological screening levels, the Parties will meet to discuss any changes that may impact corrective action activities.

K. If investigation results indicate the need to conduct corrective actions to mitigate unacceptable ecological risk due to release of site-related Contaminants, DOE may develop site-specific ecological cleanup levels. The methodology for developing ecological cleanup levels and the values generated will be provided to NMED for review and approval prior to remediation. In the event that corrective actions to mitigate unacceptable ecological risk are necessary, the Parties will meet to discuss the proposed cleanup methodology and values.

L. If attainment of the established cleanup objectives is demonstrated to be technically infeasible, DOE may perform risk-based evaluation to establish alternative cleanup objectives for specific media at individual SWMUs or AOCs. The risk-based evaluation should be conducted in accordance with NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate). For groundwater, pursuant to 20.9.9.16 NMAC, DOE may propose to demonstrate technical infeasibility or an alternative abatement standard of a groundwater cleanup objective of the groundwater quality standards found in 20.6.2 NMAC, utilizing the applicable requirements and procedures found in 20.6.2.4103.E and 4103.F NMAC.

M. For all other instances in which DOE seeks to vary from a cleanup objective identified above, DOE shall submit a demonstration to NMED that achievement of the cleanup objective is impracticable. In making such demonstration, DOE may consider such things as technical difficulty or physical impracticability of the project, the effectiveness of proposed solutions, the cost of the project, hazards to workers or to the public, and any other basis that may support a finding of impracticability at a particular SWMU(s) and/or AOC(s). DOE may also refer to all applicable guidance concerning impracticability, including, for example, the criteria set forth in EPA's Interim Final Guidance for Evaluating the Technical Impracticability of Ground-Water Restoration (September 1993) and EPA's Handbook of Groundwater Protection and Cleanup Policies for RCRA Corrective Action (April 2004 or as updated). In

addition to demonstrating the basis for their impracticability request, DOE's written submission shall propose the action to be taken by DOE if NMED approves the impracticability demonstration. Such action shall include completion of a site-specific risk assessment and identification of alternative cleanup goals or levels.

N. NMED will review DOE's written submission concerning impracticability and determine whether the demonstration is approvable. NMED may consider such things as technical or physical feasibility of the project, the effectiveness of proposed solutions, the cost of the project, hazards to workers or to the public, and any other basis that may support or refute a finding of impracticability at a particular SWMU(s) and/or AOC(s).

O. If NMED approves DOE's impracticability demonstration, it will notify DOE in writing, and such notice will describe the specific action to be taken by DOE.

#### **SECTION 10. NEWLY DISCOVERED RELEASES**

A. Newly discovered SWMUs and AOCs subject to this Consent Order shall be added to Appendix A using the process described in this Section 10, as appropriate, to support the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order).

B. DOE shall notify NMED within fifteen business (15) days upon DOE's discovery of a potential SWMU or AOC that DOE determines is subject to this Consent Order, consistent with Section 7 (Relationship to Permits).

C. For any newly discovered potential SWMU or AOC for which DOE provides notification to NMED that such SWMU or AOC is subject to this Consent Order pursuant to Section 10.B, DOE shall develop and implement a preliminary screening plan (including sampling and investigation activities and schedule for those activities) for such newly discovered potential SWMU or AOC, and provide NMED with the results of the preliminary screening.

1. If the results of the preliminary screening show that hazardous constituents are found at concentrations above residential screening levels, then such newly discovered SWMU or AOC shall be added to Appendix A in accordance with Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process), unless DOE removes the hazardous constituents to levels that would require no long-term controls. Depending on the nature of the newly discovered SWMU or AOC, it may be appropriate for DOE to update Appendices B and/or C.

2. If the results of the preliminary screening show that hazardous constituents are not found at levels in excess of residential screening levels, then DOE will notify NMED that no further action related to this Consent Order will be taken.
3. If DOE proposes that the newly discovered potential SWMU or AOC not be added to Appendix A, NMED shall review the results and determine whether or not the site should be added to Appendix A.

**SECTION 11. DEFERRED SITES**

A. Corrective action activities set forth in this Consent Order shall be Deferred only for SWMUs and AOCs: (1) when the status of the SWMU or AOC is identified in Appendix A as Deferred; or (2) that satisfy the definition of Deferred Sites and one of the circumstances in Section 11.B, but the status of such SWMUs or AOCs in Appendix A has not yet been updated to reflect that they are Deferred (in which case the Parties agree that the status of these SWMUs and AOCs will be updated in the next Appendix A revision to reflect their Deferred status).

B. There are four circumstances in which a SWMU or AOC that is not already listed as Deferred in Appendix A may be Deferred:

1. SWMUs and AOCs located within testing hazard zones of active firing sites at the Facility described in Section 11.K.
2. SWMUs and AOCs associated with active Facility operations.
3. SWMUs and AOCs that are on, or require access to, property not owned or controlled by DOE and for which DOE is unable to obtain access, consistent with Section 27.E.
4. SWMUs and AOCs that the Parties agree to be Deferred for purposes not contemplated in the preceding three circumstances, including where, pursuant to Sections 13 (Facility Investigation) and 23 (Preparation / Review / Comment on Documents), DOE submits and NMED approves an RFI work plan or RFI Report in which DOE proposes delaying investigation of a SWMU/AOC.

C. If DOE intends to change the status of a SWMU or AOC to Deferred for the circumstances listed in Sections 11.B.1 or 11.B.2 (including for purposes of national security), then DOE shall:

1. Notify NMED (with a copy of such notification to the Four Accord Pueblos and any municipality, county, or pueblo that shares a common border with the Facility) in writing of the SWMU or AOC to be changed to Deferred at least thirty (30) days prior to the SWMU or AOC being changed to Deferred, and include the following in such written notification:
  - a. DOE's certification that the conditions at the SWMU or AOC at the time of the change to Deferred status is not anticipated to result in an imminent and substantial endangerment to human health or the environment;
  - b. DOE's identification of the circumstance for which the SWMU or AOC is being Deferred and assessment of the duration of time the SWMU or AOC may be Deferred;
  - c. DOE's assessment of whether a change to Deferred status for the SWMU or AOC will result in a change to the FY summary provided in Section 8.F.3.a, and, if so, what the effects on cleanup operations would be; and
  - d. DOE's certification that a change to Deferred status for the SWMU or AOC will not result in a decrease in the funds to be expended (from the funds appropriated for the applicable FY for cleanup activity at the Facility) for cleanup activity at the Facility.

DOE's certifications in Sections 11.C.1.a and 11.C.1.d are to be made by an official at DOE's Office of Environmental Management as being true and accurate to the best of their knowledge and belief.

2. Confer with appropriate representatives of the Four Accord Pueblos and any municipality, county, or pueblo that shares a common border with the Facility regarding the SWMU or AOC to be changed to Deferred if such deferral may potentially affect the priorities of any municipality, county, or pueblo and allow them to comment on the deferral.
3. Notify the public of the SWMU or AOC to be changed to Deferred by publication on DOE's website and made available for publication on NMED's website at least twenty (20) days prior to the SWMU or AOC being changed to Deferred.

D. If DOE intends to change the status of a SWMU or AOC to Deferred pursuant to Section 11.B.3, then DOE shall follow the procedures required by Section 27.E. The Parties shall

agree on information (if any) to be provided by DOE to NMED regarding the SWMU or AOC to be Deferred, in addition to what is required by Section 27.E.

E. If DOE intends to change the status of a SWMU or AOC to Deferred pursuant to Section 11.B.4, DOE shall obtain written approval from NMED before a SWMU or AOC will be changed to Deferred. If NMED approves a SWMU or AOC to be Deferred pursuant to Section 11.B.4, the Parties shall agree on specific procedures applicable to that SWMU or AOC, including any notice requirements.

F. With 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.

G. Notwithstanding any language to the contrary in this Section 11, with the exception of Section 11.B.3, a SWMU or AOC shall not be Deferred if DOE or NMED determines that conditions at such SWMU or AOC may present an imminent and substantial endangerment to human health or the environment. If a SWMU or AOC will present an imminent and substantial endangerment to human health or the environment, DOE shall mitigate such condition through Emergency Interim Measures in accordance with Section 15.E. Before such affected SWMU or AOC is eligible to be Deferred, NMED must approve the Interim Measures Report submitted by DOE pursuant Section 15.E.

H. If a SWMU or AOC is Deferred pursuant to Sections 11.A through 11.E, the Parties shall reflect the change in status in Appendix A in accordance with Section 8.F.2. DOE also shall address any SWMU or AOC that has been, or is proposed to be, Deferred in public meetings held in accordance with Section 34.A.2.

I. If a SWMU or AOC is Deferred pursuant to Sections 11.A through 11.E, DOE shall provide annual written updates to NMED to include an explanation of what actions have been undertaken to move each SWMU or AOC out of Deferred status. For any SWMU or AOC Deferred pursuant to Sections 11.B.1 or 11.B.2, DOE also shall provide an annual certification that imminent and substantial endangerment to health or the environment has not resulted and is not anticipated to result from continued deferral of each SWMU or AOC.

J. If DOE learns of changed circumstances or new information that would materially impact the information provided to NMED in Sections 11.C. through 11.E, then DOE shall provide NMED updated information in writing within thirty (30) days.

K. Table IV-2 of the 2005 Consent Order identified SWMUs and AOCs located within testing hazard zones of active firing sites for which investigation activities were Deferred.

1. The testing hazard zones associated with these Deferred Sites are identified on a map entitled “Los Alamos National Laboratory Firing Sites” prepared by DOE and dated October 2003. The map, including revisions since that date, is incorporated herein by reference.
2. DOE may revise the geographic scope and location of the designated testing hazard zones if necessary to support DOE’s operations. If it becomes necessary to revise the geographic scope and location of the designated hazard zones to support DOE’s operations, or if any other changed circumstances or other information becomes available such that the map does not accurately depict the testing hazard zones, DOE shall revise the map and submit the following to NMED within sixty (60) days after DOE finalizes its revised map: (a) the revised map; (b) an explanation for the revision to the map; and (c) notification for SWMU(s) or AOC(s) to be Deferred per Section 11.C (as applicable). The revised version of the map shall be incorporated herein by reference and substituted for the earlier version(s).

L. While this Consent Order is in effect, the deferral of corrective action activities for these Deferred Sites continues until DOE, in its sole discretion, determines that the circumstance for which the site was Deferred no longer exists (e.g., the firing site is inactive, and DOE has determined that it is not reasonably likely to be reactivated; the active Facility operations have ceased, and DOE has determined that it is not reasonably likely that they will be resumed; DOE has received access to SWMUs or AOCs on property not owned or controlled by DOE, etc.). If this occurs while this Consent Order is in effect, the Parties shall: (1) incorporate formerly Deferred SWMUs and AOCs into Campaigns according to Section 8, at which time corrective action activities for the formerly Deferred Site will resume; and (2) update the status of these formerly Deferred SWMUs and AOCs in Appendix A.

M. DOE may propose partial investigation and partial remediation, if appropriate, if portions of the SWMUs and AOCs identified as Deferred in Appendix A become accessible. DOE shall, in its sole discretion, determine when a Deferred SWMU or AOC has become accessible or partially accessible.

N. Determinations 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.

O. Upon Termination of this Consent Order pursuant to Section 38, any Deferred SWMUs and/or AOCs will be addressed under the Permit.

## **SECTION 12. GROUNDWATER MONITORING**

A. In accordance with the 2005 Consent Order, DOE has monitored and continues to monitor groundwater at and around the Facility, including base flow, alluvial groundwater, intermediate-perched groundwater, and regional aquifer groundwater, in accordance with NMED-approved annual updates to the Interim Facility-Wide Groundwater Monitoring Plan (IFGMP), and monitoring results have been reported in periodic monitoring reports submitted to NMED. DOE shall implement the monitoring requirements of the NMED-approved IFGMP in effect on the effective date of this Consent Order and prepare and submit periodic monitoring reports required by that plan.

B. Each year, DOE shall prepare a revised IFGMP for each upcoming monitoring year (October 1 through September 30), including monitoring locations, frequencies, analytical suites, and related activities, as well as a schedule for performing monitoring activities and submitting periodic monitoring reports. As appropriate, proposed updates may include adding, deleting, or revising monitoring groups. The revised IFGMP shall specify collection of monitoring data that is necessary and sufficient to support corrective action activities. Analytical methods shall be capable of detecting Contaminants at or below screening levels or, with approval of NMED, other reporting levels, as appropriate. The revised IFGMP shall be submitted to NMED by June 30 of each year for review and approval in accordance with Section 23 (Preparation / Review / Comment on Documents) by September 30 of each year.

C. DOE shall implement the approved IFGMP. DOE shall review analytical data from groundwater monitoring in accordance with the requirements of Section 26 (Quality Assurance / Data Management / Data Review) and provide the notifications required by that Section.

D. As DOE completes corrective action activities at SWMUs or AOCs, DOE may propose changes to monitoring groups to reflect near-term groundwater monitoring activities.

E. Upon completion of corrective action activities at a SWMU or AOC or for contaminated groundwater and the requisite monitoring period, DOE may include long-term

groundwater monitoring requirements in a permit modification request. DOE will then remove groundwater monitoring requirements for that SWMU or AOC from the next revision of the IFGMP.

F. Upon Termination of this Consent Order, any groundwater monitoring requirements remaining in the most recent NMED-approved IFGMP shall be implemented through the Facility's Hazardous Waste Permit. Upon Termination of this Consent Order, DOE shall include groundwater monitoring requirements in a permit modification request made pursuant to Section 7 (Relationship to Permits).

### **SECTION 13. FACILITY INVESTIGATION**

A. RCRA Facility Investigations (RFI/s) shall be conducted, where necessary, to investigate releases or potential releases of site-related Contaminants from SWMUs and AOCs or releases of legacy Contaminants to groundwater as appropriate to support the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order). Consistent with the U.S. Environmental Protection Agency's (EPA's) *Results-Based Approaches and Tailored Oversight Guidance* (2003), investigation efforts shall be focused on the overall goal to accomplish environmental cleanup and reduce risk. To support this goal, investigation planning shall include early identification of SWMUs and AOCs not posing an unacceptable risk to human health and the environment, as well as early identification of potential remedies for those SWMUs and AOCs that potentially do pose a risk based upon current and reasonably foreseeable future land use. RFIs shall focus on collection of those data necessary and sufficient to support decisions on corrective action activities, and RFIs shall follow EPA's Data Quality Objectives (DQO) process, set forth in EPA's Guidance on Systematic Planning Using the Data Quality Objectives Process (February 2006 or as updated). DOE shall provide notification to NMED of corrective action field activities a minimum of fifteen (15) business days prior to commencing the activity.

B. The Parties agree that the term "investigation" was used under the 2005 Consent Order to mean RFI and may continue to be used in this way (e.g., investigation work plans and reports are equivalent to RFI work plans and reports).

C. Each RFI shall be performed pursuant to an RFI work plan approved by NMED in accordance with Section 23 (Preparation / Review / Comment on Documents). Each RFI work

plan shall detail the objectives, approach, estimated schedule, and work scope of the proposed investigation. Each RFI work plan shall also include a provision that allows DOE to perform extra work (e.g., step out sampling to determine nature and extent of contamination) based on data obtained during implementation of the RFI work plan, without further approval from NMED.

D. If, during investigation, DOE determines that changes to approach or work scope detailed in the work plan are needed to meet the investigation objectives, DOE shall notify NMED in writing. If changes to approach or work scope detailed in the work plan needed to complete the investigation would cause DOE to miss a Milestone, e.g., for submittal of an RFI Report, in the current FY, DOE shall request an extension in accordance with Section 28 (Extensions).

E. For those SWMUs and AOCs addressed in investigation work plans prepared and approved by NMED under the 2005 Consent Order but not yet implemented, DOE may perform the RFIs in accordance with those investigation work plans, or in accordance with an RFI work plan prepared under this Section 13.

F. Following completion of all or portions of the work scope specified in the approved RFI work plan, DOE shall review the investigation results to determine whether the objectives of the investigation have been met.

G. DOE shall document the results of investigations performed in RFI Reports. RFI Reports shall identify the corrective action activities for the SWMU(s) and/or AOC(s) that is/are the subject of the RFI and whether performance of a CME is necessary and appropriate. RFI Reports shall be submitted to NMED for review and approval in accordance with Section 23 (Preparation / Review / Comment on Documents).

H. During preparation of the RFI Report, DOE shall evaluate investigation results to determine whether to take interim measures in accordance with Section 15 (Interim Measures / Emergency Interim Measures).

I. As appropriate, NMED's approval of RFI Report(s) may provide explicit validation for whether corrective action activities are complete at particular SWMU(s) or AOC(s), including validation of recommended controls, as appropriate.

J. Consistent with Section 23 (Preparation / Review / Comment on Documents), the Parties agree to confer, and meet as appropriate, on the technical approach and/or results to be presented in RFI work plans and reports.

**SECTION 14. AREAS OF CONTAMINATION**

A. Using the procedure in Section 14.B and in accordance with EPA's Area of Contamination Policy and Memorandum (March 25, 1996), DOE may propose to designate portions of land with SWMUs and/or AOCs that are currently undergoing corrective action, into a single Area of Contamination. Consolidation or in situ treatment of wastes within the Area of Contamination will not trigger RCRA requirements such as land disposal restrictions or minimum technology requirements.

B. Should DOE choose to request an Area of Contamination designation, DOE shall request, in writing, NMED's approval of an Area of Contamination determination in advance of implementation of any work within the Area of Contamination. The request must include: (1) a description of the activities to be conducted within the Area of Contamination; (2) a map depicting the boundary of the Area of Contamination; and (3) a description of additional confirmatory sampling to be performed if the area within the Area of Contamination, but outside the original SWMU / AOC boundary, becomes contaminated.

C. NMED shall review the Area of Contamination determination request and provide a written response to DOE in which it approves, disapproves, or requests additional information.

**SECTION 15. INTERIM MEASURES / EMERGENCY INTERIM MEASURES**

A. Interim measures may be used as appropriate to reduce or prevent migration of site-related Contaminants which have or may result in an unacceptable human or environmental receptor risk while long-term corrective action remedies are evaluated and implemented. NMED and DOE may identify the need for interim measures during development or review of RFI work plans and reports, during performance of RFIs, or through review of new information related to potential releases of Contaminants from SWMU(s) or AOC(s).

B. If NMED identifies the need for interim measures, NMED shall notify DOE in writing. Alternatively, if DOE identifies the need for interim measures, DOE shall notify NMED in writing. The written notifications shall identify the SWMU(s) or AOC(s) where NMED or

DOE, as applicable, identifies the need for interim measures and the objectives of such interim measures, including the specific Contaminants, media, and receptors to be addressed. Upon receipt of such notifications, the DAMs shall meet to discuss the need for interim measures, the scope of the interim measures, and a schedule for submitting an Interim Measures Work Plan.

C. DOE shall prepare an Interim Measures Work Plan, which shall include estimated implementation schedules for completion of the interim measures, and submit the Interim Measures Work Plan to NMED for review and approval in accordance with Section 23 (Preparation / Review / Comment on Documents).

D. Following completion of interim measures, DOE shall submit to NMED an Interim Measures Report. The Interim Measures Report shall summarize the results of the interim measures and include the results of all field screening, monitoring, sampling, analysis, and other data generated as part of the interim measures implementation. NMED will review and approve the Interim Measures Report in accordance with Section 23 (Preparation / Review / Comment on Documents).

E. DOE may determine, during implementation of corrective action activities at SWMU(s) and/or AOC(s), that emergency interim measures are necessary to address an immediate threat of harm to human health or the environment. DOE shall notify NMED, by phone and in writing, within three (3) business days of discovery of the facts giving rise to the immediate threat, and shall propose emergency interim measures to address the immediate threat. NMED will respond in writing to such proposal within three (3) business days of receipt of the proposal. If NMED approves the emergency interim measures, DOE may implement the proposed emergency interim measures without submitting an Interim Measures Work Plan. If circumstances arise resulting in an immediate threat to human health or the environment such that initiation of emergency interim measures are necessary prior to obtaining written approval from NMED, DOE shall notify NMED within one (1) business day of taking the emergency interim measure. The notification, which can be made by email, shall contain a description of the emergency situation, the types and quantities of Contaminants involved, the emergency interim measures taken, and contact information for the emergency coordinator who handled the situation. The notification shall also include a written statement (email is acceptable) justifying the need to take the emergency action without prior written approval from NMED. Upon completion of emergency interim measures, an Interim Measures Report shall be prepared by

DOE and submitted to NMED for review and approval in accordance with Section 23 (Preparation / Review / Comment on Documents). This Interim Measures Report shall be submitted within ninety (90) days of completing the emergency interim measures or by an alternative date agreed to by the DAMs.

F. If implementation of an Emergency Interim Measure will impact DOE's compliance with Milestones listed in the current FY's Appendix B, DOE may implement the Emergency Interim Measure without first revising Appendix B. NMED and DOE shall meet as soon as practicable after implementation of the Emergency Interim Measure to revise Appendix B to incorporate the Emergency Interim Measure and adjust or remove any Milestone in the current FY's Appendix B that has been impacted by implementation of the Emergency Interim Measure.

## **SECTION 16. CORRECTIVE MEASURES EVALUATION**

A. Corrective Measures Evaluations (CME/s) shall be conducted as appropriate to support the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order). DOE shall perform a CME when, based on the relevant RFI Report, NMED notifies DOE that a CME is required. The Parties agree that a CME performed by DOE is equivalent to a Corrective Measures Study (CMS/s).

B. CMEs will be performed to identify, develop, and evaluate potential corrective measures alternatives for removal, containment, and/or treatment of site-related contamination. CMEs will focus on remedies based on consideration of site conditions and the extent, nature, and complexity of releases and contamination. DOE shall use a graded approach, i.e., evaluate alternatives using the criteria in Section 16.C, in identifying corrective measures alternatives. Based on application of the criteria in Section 16.C, a CME may detail why some alternatives are excluded from further evaluation in the CME.

C. DOE shall conduct CMEs that include evaluation of corrective measures alternatives using the following threshold and balancing criteria. Any corrective measure alternative proposed in the CME Report must meet the threshold criteria, which are evaluation standards derived from EPA's RCRA Corrective Action Plan, OSWER Directive 9902.3-2A (May 1994). DOE shall use the balancing criteria, which are other factors derived from that guidance, to evaluate alternatives meeting the threshold criteria.

1. Threshold Criteria
    - a. Be protective of human health and the environment.
    - b. Attain media cleanup objectives.
    - c. Control the source(s) of releases.
    - d. Comply with applicable standards for management of wastes.
  2. Balancing Criteria
    - a. Long-term reliability and effectiveness (including sustainability, long-term stewardship considerations, and long-term environmental impacts).
    - b. Reduction of toxicity, mobility, or volume of waste and contaminated media.
    - c. Short-term effectiveness (including near-term environmental impacts).
    - d. Implementability.
    - e. Cost.
- D. The balancing criteria shall be evaluated in accordance with the following:
1. Long-term Reliability and Effectiveness: The remedy shall be evaluated for long-term reliability and effectiveness, including the consideration of the magnitude of risks that will remain after implementation of the remedy; the extent of long-term monitoring, or other management that will be required after implementation of the remedy; the uncertainties associated with leaving Contaminants in place; DOE's long-term stewardship of the site, environmental impacts; sustainability; and the potential for failure of the remedy. Other criteria being equal, DOE shall give preference to a remedy that reduces risks with minimal long-term management, and that has proven effective under similar conditions.
  2. Reduction of Toxicity, Mobility, or Volume: The remedy shall be evaluated for its reduction in the toxicity, mobility, and volume of Contaminants. Other criteria being equal, DOE shall give preference to a remedy that uses treatment to more completely and permanently reduce the toxicity, mobility, and volume of Contaminants.
  3. Short-Term Effectiveness: The remedy shall be evaluated for its short-term effectiveness, including the consideration of the short-term reduction in existing risks that the remedy would achieve; the time needed to achieve that reduction; the near-term environmental impacts; and the short-term risks that might be posed

to the community, workers, and the environment during implementation of the remedy. Other criteria being equal, DOE shall give preference to a remedy that quickly reduces short-term risks as well as near-term environmental impacts, without creating significant additional risks.

4. Implementability: The remedy shall be evaluated for its implementability or the difficulty of implementing the remedy, including the consideration of installation and construction difficulties; operation and maintenance difficulties; difficulties with cleanup technology; permitting and approvals; and the availability of necessary equipment, services, expertise, and storage and disposal capacity. Other criteria being equal, DOE shall give preference to a remedy that can be implemented quickly and easily, and poses fewer and lesser difficulties.
5. Cost: The remedy shall be evaluated for its cost, including the consideration of both capital costs, and operation and maintenance costs. Capital costs shall include construction and installation costs; equipment costs; land development costs; and indirect costs, including engineering costs, legal fees, permitting fees, startup and shakedown costs, and contingency allowances. Operation and maintenance costs shall include operating labor and materials costs; maintenance labor and materials costs; replacement costs; utilities; monitoring and reporting costs; administrative costs; indirect costs; and contingency allowances. All costs shall be calculated based on their net present value. Other criteria being equal, DOE shall give preference to a remedy that is less costly, but does not sacrifice protection of human health and the environment.

E. DOE shall document the results of a CME and recommend a preferred alternative for remediation in a CME Report. CME Reports shall be submitted to NMED, and NMED shall review and issue a Statement of Basis in accordance with Section 17 (Statement of Basis / Selection of Remedies).

F. The Parties agree that CMEs performed under the 2005 Consent Order may be used to satisfy the requirements of this Section 16.

G. Consistent with Section 23 (Preparation / Review / Comment on Documents), the Parties agree to confer, and meet as appropriate, on the content of CMEs.

**SECTION 17. STATEMENT OF BASIS / SELECTION OF REMEDIES**

A. Statements of Basis shall be prepared, and remedies selected, as appropriate to support the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order). NMED shall be responsible for preparation of the Statement of Basis and selection of a remedy for which a CME Report is prepared by DOE in accordance with Section 16 (Corrective Measures Evaluation). NMED shall select the remedy based on the information presented in the relevant CME Report, data from previous RFI reports, and information provided during the public comment period and/or during the public hearing process, as applicable consistent with the regulations at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42), 20.4.1.901 NMAC, and 20.4.1.902 NMAC. The remedy that NMED selects must meet the threshold criteria set forth in Section 16.C.1), and NMED must consider Section 16.C.2's balancing criteria, as analyzed by DOE in the relevant CME Report, as part of its remedy selection. NMED may choose, consistent with EPA's RCRA Corrective Action Plan, OSWER Directive 9902.3-2A (May 1994), a different remedy from that recommended by DOE in the CME Report.

B. NMED's Statement of Basis shall describe the basis for NMED's selection of a remedy. NMED shall issue the Statement of Basis for public comment, and it shall be sufficiently detailed for the public and DOE to understand and comment on NMED's recommended decision on the remedy, and the studies and conclusions leading up to the decision on the remedy. The public comment period will extend for at least sixty (60) days from the date of the public notice of the Statement of Basis. 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. The comment period will automatically be extended to the close of the public hearing. The public hearing will follow the hearing requirements under 20.4.1.901.F NMAC. NMED will select a final remedy and issue a response to public comments to all commenters within ninety (90) days, or other appropriate time, after the end of the public comment period. In selecting a remedy, NMED will follow the public participation requirements applicable to remedy selection under 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.41), 20.4.1.901 NMAC, 20.4.1.902 NMAC, and 20.1.4 NMAC.

C. NMED's decision selecting the remedy shall follow the requirements under 20.4.1.901.G NMAC, Secretary's decision.

**SECTION 18. CORRECTIVE MEASURES IMPLEMENTATION**

A. Corrective measures, i.e., remedies selected in accordance with Section 17 (Statement of Basis / Selection of Remedies), shall be implemented as appropriate to support the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order). Corrective Measures Implementation (CMI) means the design, construction, operation, maintenance, and monitoring of the remedy selected following preparation of a CME pursuant to Section 16 and Statement of Basis pursuant to Section 17. DOE agrees to prepare CMI Plan(s), implement corrective measures, and prepare CMI Report(s).

B. Each CMI Plan shall include plans for the design, construction, operation, maintenance, and monitoring of the remedy selected by NMED under Section 17 (Statement of Basis / Selection of Remedies). Each CMI Plan shall be prepared and submitted to NMED for review and approval in accordance with Section 23 (Preparation / Review / Comment on Documents).

C. Each CMI Report shall document implementation and completion of the remedy in accordance with its NMED-approved CMI Plan. Each CMI Report shall include a recommendation of "Certificate of Completion with controls" or "Certificate of Completion without controls" for corrective action activities completed under this Consent Order. CMI Reports shall be prepared and submitted to NMED for review and approval in accordance with Section 23 (Preparation / Review / Comment on Documents).

D. NMED's approval of CMI Report(s) shall provide explicit validation for whether corrective action activities are complete at particular SWMU(s) or AOC(s), including validation of recommended controls, as appropriate.

**SECTION 19. ACCELERATED CORRECTIVE ACTION AND PRESUMPTIVE REMEDIES**

A. The Parties agree that flexibility in implementing corrective actions is needed to most efficiently achieve the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order). Accelerated corrective action activities may be implemented to address risks to human health and/or the environment, reduce corrective action costs, and/or achieve cleanup

ahead of deadlines otherwise proposed, e.g., Appendix B. Such accelerated activities are distinct from Emergency Interim Measures, as described in Section 15 (Interim Measures / Emergency Interim Measures) and shall not be subject to Milestones or associated with Targets in the current FY's Appendix B, pursuant to Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process). The Parties agree that DOE may implement accelerated corrective actions (1) involving contaminated groundwater or (2) taking longer than 180 days, notwithstanding the provisions of 20.4.2.7.A and B NMAC.

B. If an NMED-approved work plan already addresses corrective action activities that DOE endeavors to accelerate, DOE may accelerate such corrective action activities included within such NMED-approved work plan without prior written approval from NMED, provided that such accelerated activities shall not detract from Milestones in the current FY's Appendix B and that DOE shall notify NMED of such field activities associated with accelerated corrective action.

C. If an NMED-approved work plan does not address corrective action activities that DOE endeavors to accelerate, DOE may develop and submit work plan(s), and subsequently accelerate corrective action activities that are addressed by such work plan(s) without prior written approval from NMED, provided that such accelerated activities do not detract from Milestones in the current FY's Appendix B and that DOE shall notify NMED of such field activities associated with accelerated corrective action.

D. Upon completion of any accelerated activities pursuant to Sections 19.B and 19.C, DOE shall provide a report(s) that document(s) the results of the accelerated activities, as appropriate, and NMED shall review such report(s) pursuant to Section 23 (Preparation / Review / Comment on Documents).

E. Presumptive Remedies. The Parties agree that implementation of presumptive remedies is appropriate and desirable for SWMUs and AOCs for which DOE determines that there is a clear, conservative remedy for which DOE believes that there will be no need to prepare a CME under Section 16. DOE's determination will be based upon its past experience with remediation and with NMED.

1. If DOE determines that the scope of the presumptive remedy is the most bounding alternative that would otherwise be evaluated under a CME, DOE will prepare a Remedy Implementation Plan and submit it to NMED for approval consistent

with Section 23 (Preparation / Review / Comment on Documents). Upon approval, DOE will implement the Remedy Implementation Plan. The results of the implementation will be documented in a Remedy Completion Report, which DOE will submit to NMED for approval consistent with Section 23 (Preparation / Review / Comment on Documents).

2. If DOE determines that the scope of the presumptive remedy is limited enough to accomplish during the RFI (e.g., removal of small volumes of soil contaminated above soil screening levels), DOE may accelerate corrective action activities by performing the presumptive remedy during the RFI without prior notification to NMED or NMED approval. If so, DOE shall report the results of such presumptive remedy either in the relevant RFI Report pursuant to Section 13 (Facility Investigation) or in a Remedy Completion Report, which DOE will submit to NMED for approval consistent with Section 23 (Preparation / Review / Comment on Documents).
3. NMED's approval of Remedy Completion Report(s) shall provide explicit validation for whether corrective action activities are complete at particular SWMU(s) or AOC(s), including validation of recommended controls, as appropriate.

**SECTION 20. AT RISK WORK**

The Parties agree that DOE may perform any of the corrective action activities required by this Consent Order at risk and in advance of NMED approval. Should DOE fail to meet the objectives and/or requirements of the at-risk corrective action(s), NMED may require DOE to conduct additional work to satisfy the requirements of this Consent Order.

**SECTION 21. CERTIFICATION OF COMPLETION OF CORRECTIVE ACTION**

A. Certificates of Completion shall be issued, as appropriate to support the purposes of this Consent Order described in Section 2 (Purpose and Scope of Consent Order). DOE shall request Certificates of Completion for SWMUs and AOCs subject to the requirements of this Consent Order. DOE commits to timely submission of Certificate of Completion requests upon receipt of NMED's approval of completion reports, and NMED commits to a timely review of

DOE's requests for Certificates of Completion. A Certificate of Completion is intended to document completion of corrective action activities and assign controls, if necessary, at sites covered by this Consent Order and in accordance with Section 7 (Relationship to Permits).

B. NMED shall review the request(s). If NMED concurs that the corrective action activities are complete, NMED shall issue Certificate(s) of Completion. If NMED does not concur that corrective action activities are complete for the SWMU(s) or AOC(s), as applicable, NMED shall disapprove the request for Certificate of Completion and provide the basis for the disapproval in writing.

C. DOE may request Certificate(s) of Completion with or without controls, as appropriate, based on NMED's approval of relevant reports prior to the effective date of this Consent Order.

D. DOE may request, and NMED may grant, Certificate(s) of Completion without Controls for SWMUs and AOCs for which institutional or physical controls are not needed to meet cleanup objectives identified in accordance with Section 9 (Cleanup Objectives and Cleanup Levels), and for which operation, maintenance, and/or monitoring will not be required after completion of corrective actions. Except as provided in Sections 21.G, 21.H, and 21.I, SWMUs and AOCs meeting cleanup objectives for human health under the residential scenario and posing no unacceptable risk to ecological receptors shall be eligible for Certificate(s) of Completion without Controls.

E. DOE may request, and NMED may grant, Certificate(s) of Completion with Controls for SWMUs and AOCs for which institutional and/or physical controls are needed to meet cleanup objectives identified in accordance with Section 9 (Cleanup Objectives and Cleanup Levels), and/or for which operation, maintenance, and/or monitoring will be required after completion of corrective actions. For such SWMUs and AOCs, DOE shall propose appropriate controls in their request for Certificate(s) of Completion, and NMED shall specify such controls upon issuance of the Certificate(s) of Completion. Controls shall be limited to actions necessary to meet cleanup objectives identified in accordance with Section 9 (Cleanup Objectives and Cleanup Levels), as related to releases of site-related Contaminants from SWMUs and AOCs.

F. DOE may request, and NMED may grant, modification or removal of institutional and/or physical controls required by previously granted Certificate(s) of Completion based on

new information, including information that demonstrates that institutional and/or physical controls are no longer needed to meet cleanup objectives.

G. Should NMED determine that specific Contaminants are not attributable to the Facility (e.g., Contaminants from anthropogenic sources) or not attributable to a SWMU or AOC covered by this Consent Order but are included in the risk assessment, and the SWMU or AOC exceeds a residential risk solely due to the presence of these Contaminant(s), DOE may request a Certificate of Completion without controls. DOE's request must include the following items:

1. The request must indicate those Contaminants for which an acceptable risk level under a residential risk scenario was reached during corrective action activities at the site;
2. The request must indicate those Contaminants for which an acceptable risk level under a residential risk scenario was not reached through corrective action activities at the site;
3. The request must indicate how DOE will notify the current property owner (if property not owned by DOE) of the Certificate of Completion without controls, including any Contaminants identified in number 2 above at the site. NMED must be provided a copy of this notification.

H. After receipt of the Certificate of Completion without controls request pursuant to Section 21.G, NMED will review the request and either request additional information, deny the request or issue a Certificate of Completion without controls. NMED's Certificate of Completion will list the Contaminants that pose an acceptable risk under a residential risk scenario, as well as the Contaminants that pose an unacceptable risk under a residential risk scenario addressed as part of corrective action activities at the SWMU or AOC.

I. When applicable, DOE will comply with the terms of 40 C.F.R. § 266.202 with respect to identifying the presence of military munitions and whether such military munitions are a solid waste. Where DOE is conducting corrective action activities for those SWMUs and AOCs where munitions were formerly detonated, DOE will submit requests for Certificates of Completion that demonstrate how the requirements of 40 C.F.R. § 266.202 have been met and will identify proposed controls, if any, and appropriate timeframes for such controls. At either Party's request, the DAMs will meet to discuss proposed controls to resolve NMED's concerns, thus facilitating the timely issuance of Certificates of Completion for these SWMUs and AOCs.

At a minimum, DOE will commit to maintaining records on the former use of the property as a range.

J. Pursuant to the SWA, NMED reserves any right it may have to impose long-term monitoring or other activities relating to certain Contaminants that are not hazardous wastes or hazardous constituents as part of issuance of a Certificate of Completion under this Consent Order.

K. If either of the following occurs, NMED shall notify DOE of its intent to re-evaluate and potentially withdraw a Certificate of Completion:

1. Conditions unknown to NMED at the time of issuance of a Certificate of Completion, which are discovered following issuance of the Certificate of Completion, where the previously unknown conditions together with other relevant information indicate that a particular Certificate of Completion is not protective of human health or the environment; or
2. Information unknown to NMED at the time of issuance of a Certificate of Completion, which is discovered following issuance of the Certificate of Completion, where the new information together with other relevant information indicate that a particular Certificate of Completion is not protective of human health or the environment.

**SECTION 22. DESIGNATED AGENCY MANAGERS**

A. No later than twenty (20) business days after the effective date of this Consent Order, NMED and DOE shall each designate which position within their respective organizations shall serve as the Designated Agency Manager (DAM) responsible for coordinating the implementation of this Consent Order. Each Party shall notify the other in writing of the position designated, including any changes made thereto. By mutual agreement, the Parties may designate a different position within their organizations to serve as the DAM, provided that the position has sufficient authority to make decisions on behalf of the organization.

B. To the maximum extent possible, communications between NMED and DOE and all documents, including reports, agreements, and other correspondence, concerning the activities performed pursuant to the terms and conditions of this Consent Order, shall be directed through the DAMs. Except as otherwise indicated in Sections 22.C and 22.D, nothing in this Section 22

shall limit each DAM's ability to delegate authority, as appropriate, within their respective organizations, including signatory authority. Each DAM shall be responsible for ensuring the internal dissemination and processing of all communications and documents received from the other DAM.

C. The DAMs shall meet regularly and as needed, but no less than quarterly, to review and discuss the progress of work being performed under this Consent Order and any related issues or concerns. This obligation to meet may not be delegated.

D. The DAMs shall participate in the annual planning process, including mid-year adjustments to Appendix B, and any other matter prior to its elevation to dispute resolution pursuant to Section 25 (Dispute Resolution). These obligations may not be delegated below the position.

### **SECTION 23. PREPARATION / REVIEW / COMMENT ON DOCUMENTS**

A. Collaborative Engagement: To support the purposes of this Consent Order described in Section 2 (Purpose), the Parties agree to work collaboratively to resolve issues arising during preparation and review of documents and to facilitate the efficient approval of documents.

B. Resubmission of Documents Disapproved Under 2005 Consent Order: Any documents previously submitted and disapproved under the 2005 Consent Order, but not yet resubmitted by the effective date of this Consent Order, may be developed and submitted in accordance with the procedures and requirements of this Consent Order.

C. Documents Subject to NMED Approval: Appendix D contains the list of all documents that are subject to NMED approval under this Consent Order. If a document is not on this list, then that document is not subject to NMED approval.

D. Pre-Submission Review: Prior to DOE's submission of any document listed in Appendix D to NMED, the Parties agree to confer, and meet as appropriate, on the content, technical approach, and results to be presented in the documents in an effort to reach a common understanding. During this pre-submission review, NMED will attempt to identify issues or concerns with the technical approach or results that may preclude NMED's approval. At least ten (10) business days prior to the pre-submission meeting, DOE will provide to NMED either: (1) a draft of the document to be submitted; or (2) a summary of the document to be submitted.

E. NMED Review Schedule

1. Review Timeframes: NMED shall review and approve or disapprove of documents listed in Appendix D that are submitted by DOE within the timeframes set forth in Appendix D.
2. Extension from Secretary of NMED: The Secretary of NMED may grant an extension of time for good cause shown for NMED to review and approve or disapprove of documents listed in Appendix D, but in no event shall the extension be for a number of days greater than the number of days set forth in Appendix D. For purposes of Section 23.E, the need for additional time for the Parties to resolve informal comments as provided in Section 23.F may qualify as good cause for an extension.
3. Written Notice of NMED Not Reviewing in Timeframe:
  - a. If NMED does not review and approve or disapprove of documents in accordance with Section 23.E.1, then NMED shall notify DOE in writing within ten (10) business days after the deadline that NMED did not meet the timeframe. NMED's written notice to DOE shall:
    - i. state the reasons why NMED did not meet the timeframe;
    - ii. provide a new deadline by which NMED will review and approve or disapprove of the pertinent document;
    - iii. include the Secretary of NMED's written grant of the extension of time for good cause shown as an enclosure; and
    - iv. state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframes set forth in Appendix D in the future.

The new deadline by which NMED proposes to complete its review and approval or disapproval of the pertinent document in NMED's written notice shall be subject to, and limited in duration by, the Secretary of NMED's grant (if any) of an extension of time for good cause shown.
  - b. Within fifteen (15) business days of sending the written notice detailed in Section 23.E.3.a to DOE, NMED shall post the written notice on NMED's website.

4. Impacted Milestones, Targets, Schedules, or Campaign Completion Dates: DOE is not subject to stipulated penalties for not meeting Milestones or Campaign Completion Dates that are impacted by NMED not reviewing and approving or disapproving documents in accordance with Section 23.E.1. For purposes of implementing this Section 23.E.4, DOE: (a) determines whether Milestones, Targets, five-year schedules, or Campaign Completion Dates are impacted; and (b) establishes the revised Milestones, Targets, five-year schedules, or Campaign Completion Dates. DOE shall provide NMED with a written explanation of how the Milestones, Targets, five-year schedules, or Campaign Completion Dates are impacted, and specify the revised Milestones, Targets, five-year schedules, or Campaign Completion Dates, and the good cause for such revised dates. For the avoidance of doubt, this Section 23.E.4 applies even if the Secretary of NMED grants an extension of time pursuant to Section 23.E.2.
5. Discussion of NMED Reviews in Public Meetings: In the annual public meeting jointly held by DOE and NMED pursuant to Section 34.A.3, NMED shall:
  - (a) discuss all instances during the prior FY in which NMED did not review documents in accordance with Section 23.E.1; and
  - (b) state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframes set forth in Appendix D in the future.
6. Failure of NMED to Receive Extension or Review Within Extended Timeframe
  - a. If NMED either:
    - i. Does not receive an extension from the Secretary of NMED pursuant to Section 23.E.3.a.iii and does not complete its review to approve or disapprove the document within the original timeframe set forth in Appendix D, or
    - ii. Receives an extension from the Secretary of NMED pursuant to Section 23.E.3.a.iii and does not complete its review to approve or disapprove the document within the extended timeframe set forth in Section 23.E.3.a.ii, then NMED shall award DOE a credit equivalent to the amount of stipulated penalties that DOE would be obligated to pay NMED for a delinquent Milestone under Section 36.A.5 for each day beyond the applicable deadline

that NMED fails to complete its review of the document. Such credit may then be used by DOE to offset any future stipulated penalties it may incur under this Consent Order or other fees that DOE may owe to NMED.

- b. Notwithstanding the foregoing Section 23.E.6.a, the DAMs may by mutual agreement further extend the timeframe following an extension of time granted by the Secretary of NMED pursuant to Section 23.E.2 and 23.E.3.a.iii, provided that: (i) such extension is for a reasonable period and does not exceed the number of days set forth in Appendix D; (ii) the Parties have met, pursuant to Section 23.F, to informally review and discuss NMED's proposed concerns and comments on the submitted document; and (iii) the DAMs agree additional time would facilitate resolution of comments on the submitted document that would enable NMED's approval of the document.

F. Informal Review/Comment Resolution Process: Prior to NMED's approval with modifications or disapproval of DOE's submission(s), the Parties agree to attempt to resolve NMED's concerns and comments informally to the extent possible. To accomplish this goal, the Parties shall meet to informally review, discuss, and, if possible, resolve, NMED's proposed concerns and comments.

1. During this informal comment resolution process, NMED may request that DOE provide supplemental information needed to aid NMED's review and DOE will use its best efforts to provide such information. Such supplemental information may also be voluntarily submitted by DOE to NMED.
2. During this informal comment resolution process, NMED agrees to share with DOE information regarding its anticipated approval with modifications or disapproval.

G. Following the informal comment resolution meeting, and upon review and consideration of any supplemental information provided by DOE, NMED shall submit to DOE a formal, written response to DOE's submission(s) that shall be limited to: approve the document as submitted; approve the document with modifications; or, disapprove the document.

1. If NMED approves the document as submitted, no additional revisions or modifications to the document shall be needed.

2. If NMED approves the document with modifications, NMED's notification shall clarify whether DOE needs to resubmit a revised document and specify a time frame for DOE's response. The Parties agree that, whenever possible, NMED shall limit the need for DOE to resubmit the document; the Parties further agree that NMED's approval of a document with modifications is intended to address the situation where modification can be accommodated by limited page changes without a complete revision of the document. Except in cases where DOE objects to the modifications, if DOE's document need not be revised, DOE will incorporate the modifications into corrective action activities. Where NMED approval with modifications entails additional work, the Parties agree to discuss NMED's proposed additional work during the informal comment resolution process in Section 23.F and follow the process set forth in Sections 23.K and 23.L.
3. If NMED disapproves the document, NMED shall provide written comments that identify the reasons for the disapproval ("disapproval comments") and specify a time frame for DOE's response. NMED's disapproval comments shall be limited to addressing the information presented in the document being reviewed and requirements applicable to that document, and shall not apply to other documents. NMED comments intended to impact future document submissions shall be addressed pursuant to Section 23.J.

H. Disapproval: If NMED disapproves the document, after NMED provides disapproval comments, a meeting to discuss the disapproval comments and to resolve these comments shall be held if requested by DOE's DAM. This meeting shall be attended by both DAMs, NMED's reviewer(s) of the document, and technical staff familiar with the document.

1. Before this meeting, DOE may prepare and provide to NMED, a draft written response (e.g., response letter, comment response document, or change table) to each of NMED's disapproval comments. DOE's draft responses shall either indicate concurrence with NMED's comment or indicate nonconcurrence and provide an explanation for nonconcurrence. Each draft response shall also identify revisions to the document, if any, resulting from the comment.

2. After this meeting, NMED may withdraw its disapproval and submit to DOE a formal, written response that approves the document or approves the document with modifications agreed upon as a result of the meeting.
3. After this meeting, DOE may revise and submit to NMED the revised document based on NMED's disapproval comments and the resolution of comments agreed upon at the meeting. If DOE elects to submit a revised document, DOE shall include a final written response to each of NMED's disapproval comments with its revised document.
4. If DOE's DAM does not request a meeting, DOE may revise the document and resubmit to NMED without a meeting. In this case, DOE shall include a written response to each of NMED's disapproval comments with its revised document.
5. Upon DOE's submission of a revised document, NMED shall review DOE's revised document and shall submit to DOE a formal, written response which shall approve the document as revised, approve with modifications, or disapprove the document. If NMED disapproves the document, NMED shall provide written comments that identify the reasons for the disapproval.

I. If NMED disapproves a revised document pursuant to Section 23.H, the Parties shall use the dispute resolution process provided in Section 25 (Dispute Resolution) to resolve disapproval comments. This dispute resolution process shall determine the actions, if any, required to reach a resolved document.

J. The Parties agree that, during the comment resolution process, NMED may raise comments for discussion intended to impact future document submissions if intended to improve quality or efficiency. The DAMs will be notified of such comments and meet to discuss as needed.

K. NMED may at any time request additional work, including field modifications, remedial investigatory work, or engineering evaluations, which NMED believes is necessary to accomplish the requirements of this Consent Order. Such requests shall be in writing to DOE and provide explicit justification for the additional work relative to defined, site/project-specific objectives. DOE agrees to give full consideration to all such requests. In response to such requests, DOE may either: (1) accept any such requests and incorporate them into future work plan; or (2) request a meeting of the DAMs to further discuss the request.

L. Should additional work be required pursuant to Section 23.K, as appropriate, Appendices B and/or C to this Consent Order may be modified in accordance with Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process) and Section 28 (Extensions) of this Consent Order.

M. Newly-discovered SWMUs and AOCs shall be addressed under Section 10 (Newly Discovered Releases) of this Consent Order, rather than as additional work under Sections 23.K and 23.L.

**SECTION 24. NOTIFICATION AND SUBMISSION**

A. For documents submitted to NMED under this Consent Order, DOE shall submit two hard copies and one electronic copy.

B. Unless otherwise specified, submittals provided to NMED or correspondence sent to DOE pursuant to this Consent Order shall be sent by certified mail, return receipt requested, hand-delivered, or similar method (including electronic transmission) which provides a written record of the sending and receiving dates. Should submittals be provided through electronic transmission, hard copies shall also be provided as soon as practicable. Submittals shall be addressed to the following persons:

1. NMED  
LANL Consent Order DAM  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303
  
2. DOE  
LANL Consent Order DAM  
U.S. Department of Energy  
Environmental Management  
Los Alamos Field Office  
1200 Trinity Drive, Suite 400  
Los Alamos, New Mexico 87544

C. Any Party may, by written notice to the other Party, change its designated recipient or notice address provided above.

D. Notices submitted pursuant to this Section 24 shall be deemed submitted upon receipt, unless otherwise provided in this Consent Order or by mutual agreement of the Parties in writing.

E. The Parties agree that electronic transmissions made during normal business hours fulfill the submission requirements if DOE is unable to provide the hard copy submission by the submission deadline.

## **SECTION 25. DISPUTE RESOLUTION**

A. Best Efforts: Any 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.

B. Informal Negotiations: Any dispute that arises under this Consent Order shall in the first instance be the subject of informal negotiations among the Parties' staff engaged in the dispute and the DAMs. The Parties agree to use their best efforts to resolve any dispute that arises during the informal negotiations provided in this Section 25.B. To initiate a dispute, the complaining Party's DAM shall send the other Party's DAM a written notice (email is acceptable). Such notice shall contain: (1) a description of the disputed issue; (2) the basis for and significance of the dispute; and (3) a proposed resolution. The dispute shall be considered to have arisen when the receiving Party receives the written notice of dispute from the complaining Party. The period for informal negotiations shall not exceed twenty (20) business days from the date the dispute arises, unless the period is extended by written agreement of the DAMs.

C. Technical Disputes: For this Section 25.C to apply, the Parties must agree that the dispute constitutes a technical dispute. Technical disputes generally will concern only scientific or engineering matters. If the Parties do not agree that the dispute constitutes a technical dispute, the Parties shall engage in informal discussions for no more than five (5) business days in a good faith attempt to resolve the disagreement as to whether the dispute constitutes a technical dispute—including, where possible, bifurcation of the dispute into technical and non-technical aspects. In the event of such bifurcation, the technical aspect(s) of the dispute constitute a

technical dispute for purposes of this Section 25.C. If the Parties are unable to resolve the disagreement after informal discussions, then the dispute resolution procedures for non-technical disputes set forth in Section 25.D apply.

1. Tier 1 Officials

- a. If the Parties are unable to resolve a dispute by informal negotiation under Section 25.B, and the Parties agree that the dispute constitutes a technical dispute, then the technical dispute shall be elevated to: (i) the NMED Resource Protection Division, Division Director (or successor Division); and (ii) DOE, Office of Environmental Management, Los Alamos Field Office, Office of Quality and Regulatory Compliance, Director (or successor Office) (“*Tier 1 Officials*”).
- b. Within fifteen (15) business days after the expiration of the informal dispute resolution period set forth in Section 25.B, each DAM shall submit a written statement of position to the Tier 1 Officials. The written statements of position shall: (i) document which Milestones, Targets, and Campaign Completion Dates are involved or impacted by the technical dispute; (ii) summarize the Parties’ previous discussions and attempts to resolve the technical dispute; and (iii) set forth the submitting DAM’s recommendation on the issue(s) in dispute. The Tier 1 Officials shall review the written statements of position and shall meet and confer in an attempt to resolve the technical dispute.
- c. The period for negotiations of the Tier 1 Officials shall not exceed thirty (30) days after the date the Tier 1 Officials receive the Parties’ written statements of position, unless the period is extended by written agreement of the Tier 1 Officials.

2. Expert

- a. If the Parties are unable to resolve a technical dispute through negotiations by the Tier 1 Officials under Section 25.C.1, the Parties agree to use an expert to resolve the technical dispute. The expert shall be jointly agreed upon by the Parties within thirty (30) days after expiration of the period for negotiations by the Tier 1 Officials, unless the Parties agree that additional time is needed to agree on an expert. The cost of such expert shall be shared equally between

the Parties. The Parties agree to cooperate fully in the expeditious conduct of the expert determination, and to provide the expert with books, records, documents, information, and personnel necessary to make a fully informed decision in an expeditious manner. The expert, once selected, must not have ex parte communications with either Party concerning the dispute.

- b. Before issuing a final decision, the expert shall issue a draft report and allow the Parties ten (10) business days to comment on the contents of the draft report. Unless otherwise agreed to by the Parties upon request from the expert with good cause, the expert shall endeavor to resolve the dispute within thirty (30) days, but not later than sixty (60) days after their appointment. The expert's decision shall be final and binding on the Parties.

D. Non-Technical Disputes

1. Tier 1 Officials

- a. If the Parties are unable to resolve a dispute by informal negotiation under Section 25.B. and the Parties do not agree that the dispute constitutes a technical dispute per Section 25.C, then the dispute shall be elevated to the Tier 1 Officials.
- b. Within fifteen (15) business days after the expiration of the informal dispute resolution period set forth in Section 25.B, each DAM (or their respective staff) shall submit a written statement of position to the Tier 1 Officials. The written statements of position shall: (i) document which Milestones, Targets, and Campaign Completion Dates are involved or impacted by the dispute; (ii) summarize the Parties' previous discussions and attempts to resolve the dispute; and (iii) set forth the submitting DAM's recommendation on the issue(s) in dispute. The Tier 1 Officials shall review the written statements of position and shall meet and confer in an attempt to resolve the dispute.
- c. The period for negotiations of the Tier 1 Officials shall not exceed thirty (30) days after the date the Tier 1 Officials receive the Parties' written statements of position, unless the period is extended by written agreement of the Tier 1 Officials.

2. Tier 2 Officials

- a. If the Parties are unable to resolve a dispute through negotiations of the Tier 1 Officials under Section 25.D.1, the matter shall be elevated to: (i) the NMED Deputy Secretary of Operations; and (ii) the Manager of DOE, Office of Environmental Management, Los Alamos Field Office (“*Tier 2 Officials*”).
- b. Within fifteen (15) business days after expiration of the period for negotiations by the Tier 1 Officials, each Tier 1 Official shall submit a written statement of position to the Tier 2 Officials. The written statements of position shall: (i) document which Milestones, Targets, and Campaign Completion Dates are involved or impacted by the dispute; (ii) summarize the Parties’ previous discussions and attempts to resolve the dispute; and (iii) set forth the submitting Tier 1 Official’s recommendation on the issue(s) in dispute. The Tier 2 Officials shall review the Parties’ written statements of position and shall meet and confer in an attempt to resolve the dispute.
- c. The period for negotiations by the Tier 2 Officials shall not exceed thirty (30) days after the date the Tier 2 Officials receive the Parties’ written statements from the Tier 1 Officials, unless the period is extended by written agreement of the Tier 2 Officials.

3. Non-Binding Dispute Resolution and Legal Relief

- a. If the Parties are unable to resolve a dispute through negotiations by the Tier 2 Officials under Section 25.D.2, the Parties will seek to resolve the dispute through non-binding mediation or another non-binding dispute resolution method.
- b. If the Parties are unable to resolve the dispute through non-binding mediation or another non-binding dispute resolution method, the Parties will then refer the dispute to an agreed-upon third-party adjudicator (presumptively a former judge or magistrate) to decide the matter in dispute. The costs for the adjudicator shall be shared equally between the Parties. The decision of the adjudicator will be deemed to be the final action for purposes of judicial review.

- c. If a Party elects to pursue judicial review of the adjudicator's decision, that Party shall notify the other Party in writing within ten (10) business days after issuance of the adjudicator's decision.

E. Substitution of Tier 1 and Tier 2 Officials: For purposes of Section 25.C and Section 25.D, if a change in personnel or positions at either Party would result in the same individual serving simultaneously in two or more of the following positions—DAM, Tier 1 Official, or Tier 2 Official—then, during the informal negotiations under Section 25.B, the Parties shall identify substitutes to serve as the Tier 1 Officials, Tier 2 Officials, or both (as applicable), to ensure that a different individual will be involved at each level of dispute resolution under this Section 25.

F. Abeyance of Deadlines and Payment

1. The deadline for any obligation of DOE under this Consent Order that is directly affected by a dispute raised pursuant to this Section 25 shall be held in abeyance until the dispute is resolved.
2. The invocation of the dispute resolution process shall not, however, extend, postpone, or affect in any way any obligations of DOE under this Consent Order not directly in dispute, unless otherwise agreed by NMED in writing.
3. Stipulated penalties attributable to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute.

G. Payment or Credit to Prevailing Party

1. If NMED prevails in the dispute, DOE shall pay all accrued stipulated penalties, plus accrued interest, in accordance with Section 36 (Stipulated Penalties).
2. If DOE prevails in the dispute, NMED shall award DOE a credit equivalent to the amount of stipulated penalties, plus accrued interest, that DOE would have been obligated to pay to NMED had NMED prevailed in the dispute. Such credit may then be used by DOE to offset any future stipulated penalties it may incur under this Consent Order or other fees that DOE may owe to NMED.
3. For purposes of Section 25.G, accrued interest shall cease to accrue upon the resolution of the dispute.

**SECTION 26. QUALITY ASSURANCE / DATA MANAGEMENT / DATA REVIEW**

A. Samples collected by DOE during investigations, monitoring, or other activities conducted pursuant to this Consent Order shall be analyzed using EPA and industry-wide accepted practices and procedures. Analytical methods used by DOE for sample analysis shall have detection limits consistent with site/project-specific Data Quality Objectives and approved by NMED. Contract analytical laboratories used by DOE shall maintain internal quality assurance programs in accordance with EPA and industry-wide accepted practices and procedures and which meet EPA's laboratory certification requirements. Laboratory analytical data shall be validated using data validation procedures consistent with EPA guidelines.

B. DOE commits to maintaining a publicly accessible database containing all data from analysis of environmental media samples collected by DOE as part of environmental investigations and monitoring under this Consent Order or the 2005 Consent Order, and all historical data presented in documents prepared under this Consent Order or the 2005 Consent Order.

C. By the fifteenth (15th) day of each month, DOE shall review the analytical data from all groundwater monitoring conducted under this Consent Order that was received during the previous month, and shall record the date of such review; provided, however, that if the fifteenth (15th) day of a month is a non-business day, then the review shall be conducted by the next business day. DOE shall notify NMED orally within one (1) business day after review of the analytical data if such data show detection of a Contaminant in a well screen interval or spring at a concentration that exceeds either the New Mexico water quality standard or the Federal maximum contaminant level for the first time in such well screen interval or spring.

D. DOE shall notify NMED in writing within fifteen (15) business days after review of the analytical data if the data show any of the following:

1. Detection of a Contaminant that is an organic compound in a spring or screened interval of a well if that Contaminant has not previously been detected in the spring or screened interval.
2. Detection of a Contaminant that is a metal or other inorganic compound at a concentration above the background level in a spring or screened interval of a well if that Contaminant has not previously exceeded the background level in the spring or screened interval.

3. Detection of a Contaminant in a spring or screened interval of a well at a concentration that exceeds the lower of either one-half the New Mexico water quality standard or one-half the Federal maximum contaminant level, or if there is no such standard for the Contaminant, one-half the Tap Water Screening Levels in Table A-1 of NMED's *Risk Assessment Guidance for Site Investigations and Remediation* (2015 or updates, as appropriate), or if there is no NMED Tap Water Screening Level available for a Contaminant, use one-half the EPA Regional Human Health Medium-Specific Screening Level for tap water, if that Contaminant has not previously exceeded one-half such standard or screening level in the spring or screened interval.
4. Detection of a Contaminant that is a metal or other inorganic compound in a spring or screened interval of a well at a concentration that exceeds two times the background level for the third consecutive sampling of the spring or screened interval.
5. Detection of a Contaminant in a spring or screened interval of a well at a concentration that exceeds either one-half the New Mexico water quality standard or one-half the Federal maximum contaminant level, and that has increased for the third consecutive sampling of that spring or screened interval.

E. The written notification pursuant to Section 26.D shall be submitted to NMED in a letter report that includes in table format, at a minimum, the date or dates of the sampling event, an identification of the well or spring, the location of the well or spring, the depth of the screened interval of the well or zone sampled, a list of the analytical data that triggered the reporting requirement, any known issues with sample quality, and the specific category for which the data is reported under this Section 26.

F. DOE shall develop and maintain an e-mail notification list to notify members of the public concerning groundwater analytical data reported under this Section 26. DOE shall provide a link on an appropriate DOE webpage whereby members of the public may submit a request to be placed on this list. Within five (5) business days of submittal to NMED of the written notification under this Section 26, DOE shall post a notice on this webpage and shall notify those on the e-mail notification list.

**SECTION 27. ACCESS / DATA / DOCUMENT AVAILABILITY**

A. In accordance with Section 74-4-4.3 of the HWA, for purposes of enforcing the requirements of this Consent Order, DOE shall allow any authorized representative of NMED to enter the Facility at reasonable times and in accordance with applicable security requirements:

(1) to inspect the Facility; (2) to obtain samples of any hazardous waste or environmental media; and (3) to inspect and copy documents relating to this Consent Order, subject to applicable security restrictions related to classified information. With the exception of unannounced inspections, NMED inspections will be previously arranged and coordinated, and DOE will honor all reasonable requests for access made by NMED.

B. DOE shall notify NMED in writing or by e-mail of any field sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of fifteen (15) business days prior to the sampling being conducted as required to meet the terms of this Consent Order, and shall provide NMED the opportunity to collect split samples upon request of NMED. For such events, DOE should provide NMED as much advance notice as is practicable (i.e., more than fifteen (15) business days, if possible).

C. DOE shall notify NMED in writing or by e-mail a minimum of fifteen (15) business days prior to the implementation of any plan required under this Consent Order.

D. Nothing in this Section 27 shall be construed to limit or impair in any way the inspection and entry authority of NMED under the HWA, the Hazardous Waste Regulations, RCRA, or any other applicable law or regulations.

E. If any work under this Consent Order is required on or requires access to property not owned or controlled by DOE, DOE shall use their best efforts to obtain access from the present owners of such property to conduct required activities, and to allow NMED access to such property to oversee such activities. In the event that access is not obtained, DOE shall notify NMED in writing regarding DOE's best efforts and the failure to obtain such access. Such work will become "Deferred" until the time that access issues are resolved. Additionally, provided DOE is denied access despite its best efforts, NMED will not take enforcement action, including pursuing stipulated penalties against DOE for failure to complete corrective action activities: (1) on property not owned or controlled by DOE; or (2) that require access to property not owned or controlled by DOE.

F. Information, records, or other documents produced under the terms of this Consent Order by the Parties shall be available to the public except (1) those identified to NMED by DOE as classified, or unclassified but controlled, within the meaning of and in conformance with the AEA, or (2) those that could otherwise be withheld pursuant to the Freedom of Information Act or the Privacy Act, unless expressly authorized for release by the originating agency. Documents or information so identified shall be handled in accordance with applicable laws and regulations. If any information, record, or other document is final and no confidentiality claim accompanies information which is submitted to any Party, then the information, record, or document may be made available to the public without further notice to the originating Party.

**SECTION 28. EXTENSIONS**

A. A Milestone or Campaign Completion Date shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. If an extension due to good cause affects any Milestone in Appendix B, the revised Milestone will be incorporated into Appendix B pursuant to the process set forth in Section 8.F (Campaigns, Five-Year Schedules, and Annual Planning Process). Moreover, Targets (if applicable) related to the revised Milestone shall also be extended, consistent with the revised Milestone and pursuant to the process set forth in Section 8.C (Campaigns, Five-Year Schedules, and Annual Planning Process). If an extension due to good cause affects any Campaign Completion Date in Appendix C, the revised Campaign Completion Date will be incorporated into Appendix C pursuant to the process set forth in Section 8.F (Campaigns, Five-Year Schedules, and Annual Planning Process).

B. A request for an extension shall be made in writing prior to the Milestone listed in Appendix B or the Campaign Completion Date listed in Appendix C. If extraordinary circumstances preclude DOE from providing a written extension request in accordance with this Section, DOE may notify NMED orally or by e-mail and follow up in writing within 72 hours. Any written request shall be provided to NMED pursuant to Section 24 (Notification and Submission). The written request shall specify:

1. The Milestone or Campaign Completion Date that is sought to be extended.
2. The length of the extension sought.
3. The good cause(s) for the extension.

4. Any related Milestones, Targets, or Campaign Completion Dates that would be affected if the extension were granted.

C. Examples of good cause for an extension include:

1. An event of Force Majeure and recovery from Force Majeure.
2. A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action.
3. A delay caused, or which is likely to be caused, by the grant of an extension in regard to another Milestone or Campaign Completion Date.
4. A delay caused because of additional work added pursuant to Sections 23.K and 23.L.
5. Unanticipated breakage or accident to machinery, equipment, or lines of pipe.
6. Any other event or series of events, including new technical information or technological barriers mutually agreed to by the Parties as constituting good cause.

D. Within fifteen (15) business days of receipt of a written request for an extension of a Milestone in Appendix B or Campaign Completion Date in Appendix C, NMED shall provide a written response to DOE with approval or disapproval, including a justification for disapproval. NMED's failure to respond within fifteen (15) business days shall result in an automatic extension of time for DOE, and such extension would be incorporated into the next scheduled revision of Appendix B or Appendix C, as applicable.

E. A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected Milestone or Campaign Completion Date until a decision is reached on whether the requested extension will be approved. Following the grant of an extension, an assessment of stipulated penalties, as defined in Section 36 (Stipulated Penalties), or an application for judicial enforcement may be sought only to compel compliance with the revised Milestone date or Campaign Completion Date.

## **SECTION 29. RETENTION OF RECORDS**

A. DOE shall maintain all records, documents, data, and other information required to be prepared under this Consent Order for ten (10) years after DOE's receipt of NMED's written

notice of Termination of the Consent Order pursuant to Section 38 (Termination). The only exception to this requirement relates to:

1. Those SWMUs and AOCs which have received a Certificate of Completion with Controls pursuant to Section 21 (Certification of Completion of Corrective Action) and for which controls are being implemented and enforced under the Facility's Hazardous Waste Permit.
2. Those SWMUs and AOCs identified as "Deferred" in Appendix A at the time of Termination of this Consent Order and for which corrective actions will be implemented under the Facility's Hazardous Waste Permit.

B. Nothing herein shall be construed as a waiver of any attorney-client, work product, or other privilege that DOE might otherwise possess.

**SECTION 30. FUNDING**

A. It is the expectation of the Parties that all obligations of DOE arising under this Consent Order will be fully funded through Congressional appropriations. Consistent with Congressional limitations on future funding, DOE shall take all necessary steps and use its best efforts to obtain timely funding to meet its obligations under this Consent Order, including the submission of timely budget requests.

B. Nothing in this Section 30 shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

**SECTION 31. COMPLIANCE WITH LAWS**

DOE shall undertake all actions required by this Consent Order in accordance with the requirements of all applicable Federal, state, and local laws and regulations. Nothing in this Consent Order shall be construed as relieving DOE of the obligation to comply with applicable law. NMED shall not require DOE to implement any actions under this Consent Order that would result in noncompliance with other state and Federal requirements.

**SECTION 32. FORCE MAJEURE**

A. A Force Majeure shall mean 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. A Force Majeure shall not include unanticipated or increased costs or expenses associated with the implementation of this Consent Order.

B. A Force Majeure could include:

1. Act of God, natural disasters such as fire or flood, war, terrorism, insurrection, civil disturbance, or explosion;
2. A Federal government shutdown, including lapse of appropriations;
3. Restraint by court order or order of public authority;
4. Inability 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;
5. Delays caused by compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures despite the exercise of reasonable diligence;
6. Any strike or other labor dispute, whether or not within the control of the Parties affected thereby; and
7. A public health emergency as declared by the executive branch of the Federal or state government, including an epidemic or pandemic.

C. DOE's failure to comply with any obligation under this Consent Order that is caused by a Force Majeure, such as an event listed in Section 32.B, is not a violation of this Consent Order.

D. DOE shall notify NMED within seven (7) business days after DOE becomes aware of a Force Majeure and shall take all reasonable measures to minimize and mitigate any delay. In its notification, DOE shall identify and provide to NMED the delay expected for corrective action activities affected by the Force Majeure and provide appropriate justification for the length of the delay needed to account for the Force Majeure and sufficient recovery. Provided NMED agrees with the justification for the length of the delay, NMED shall grant an extension pursuant to Section 28 (Extensions).

**SECTION 33. MODIFICATION**

A. This Consent Order may be modified by agreement of DOE and NMED. All modifications shall be in writing and shall become effective upon the date on which such modifications are signed by both DOE and NMED. Pursuant to Section 7 (Relationship to Permits), modifications of this Consent Order are not subject to the requirements in 40 C.F.R. § 270.42.

B. No informal advice, guidance, suggestions, or comments by NMED shall be construed to expand or reduce any obligation of DOE under this Consent Order unless documented as formal modification to the Consent Order pursuant to Section 33.A.

C. Should a modification(s) to the Consent Order be proposed that may potentially affect the priorities of any municipality, county, or pueblo that shares a common border with the Facility, as well as the Four Accord Pueblos, NMED must confer with appropriate representatives of such municipalities, counties, and pueblos and allow them to comment on the proposed modification(s). These comments shall be considered when modifying the Consent Order.

**SECTION 34. PUBLIC PARTICIPATION, PUEBLO AND LOCAL GOVERNMENT CONFERRALS, INDEPENDENT AUDITS, AND 10 YEAR REVIEWS**

A. Public Participation

1. As stated in Section 2.B, a general purpose of this Consent Order is to provide for effective public participation. The Consent Order provides numerous opportunities for such public participation. These opportunities include: (a) annual public meetings regarding changes agreed to between the Parties to Appendices A, B, and C, addressed in Section 8.F; (b) a public comment period and an opportunity for a public hearing on Statements of Basis issued by NMED, addressed in Section 17.B; (c) a publicly accessible database, which contains all data from analysis of environmental media samples collected by DOE as part of environmental investigations and monitoring under this Consent Order or the 2005 Consent Order, and all historical data presented in documents prepared under this Consent Order or the 2005 Consent Order, addressed in Section 26.B; (d) an opportunity to receive email notifications concerning certain groundwater

analytical data, addressed in Section 26.F; (e) quarterly public meetings hosted by DOE regarding actions taken pursuant to this Consent Order, addressed in Section 34.A.2; (f) an email address for which the public may submit comments to DOE regarding this Consent Order, addressed in Section 34.A.4; and (g) public input for, and access to, independent third-party audits, addressed in Section 34.C and Appendix G.

2. DOE will host a public meeting regarding actions taken pursuant to this Consent Order at least once per quarter of a fiscal year, including proposed changes, if any, to Appendices A, B, and C.
  - a. At least seventy-two (72) hours before each quarterly meeting, DOE will:
    - (i) publish on its website an agenda of topics to be discussed at the quarterly meeting; and
    - (ii) make the published agenda available to NMED to post on NMED's website.
  - b. At each quarterly meeting, DOE will provide time for public comment regarding corrective actions taken pursuant to this Consent Order, including proposed changes, if any, to Appendices A, B, and C.
  - c. DOE shall video record one public meeting per quarter conducted pursuant to Section 34.A.2, and make those video recordings available for viewing on a publicly accessible website. One of the video recordings required by this section shall be the joint meeting required in Section 34.A.3.
  - d. By way of reference, the following categories of meetings satisfy this public meeting requirement: (i) Northern New Mexico Citizen Advisory Board meetings; (ii) Environmental Management Cleanup Forums; and (iii) any other public meeting that DOE hosts that involves, or is related to, the Consent Order.
3. The Parties shall jointly host a public meeting once per year to inform the public of DOE's progress on Campaigns as reflected by completion of Milestones and other deliverables under the Consent Order during the past fiscal year, and changes to Appendices A, B, and C for the next fiscal year. This meeting shall satisfy one of the quarterly meeting obligations for DOE in Section 34.A.2.

4. DOE will maintain an email address for the public to submit comments or suggestions regarding this Consent Order and DOE will take pertinent comments and suggestions under advisement. Nothing in this Section obligates DOE to respond to emails submitted.

B. Pueblo and Local Government Conferrals

The public meetings addressed in Sections 34.A.2 and 34 A.3 are distinct from conferrals with the Four Accord Pueblos and county or municipal governments conducted pursuant to Sections 8.A.5 and 33.C of this Consent Order.

C. Independent Audits

The Parties may conduct independent audits pertaining to the Consent Order. The details for conducting such audits are specified in Appendix G.

D. 10 Year Reviews

Beginning no later than **[INSERT DATE]**, the Parties agree to review and evaluate the Consent Order every 10 years to determine its efficacy and consider whether modifications are warranted. Such review and evaluation will utilize the results of any independent audits conducted pursuant to Section 34.C and Appendix G. Nothing in this provision precludes the Parties from modifying the Consent Order at any time, as provided in Section 33.

**SECTION 35. COVENANT NOT TO SUE / RESERVATION OF RIGHTS**

A. Covenant Not to Sue: In consideration of the actions that will be performed by DOE under the terms of this Consent Order, and except as specifically provided in Section 35.B (Reservation of Rights), NMED covenants not to sue or take administrative action against DOE, its respective officers, agents, successors, or assigns, under the HWA, the SWA, or RCRA, for matters within the scope of this Consent Order. This covenant not to sue shall take effect upon the effective date of this Consent Order. This covenant not to sue extends only to DOE and its respective officers, agents, successors, and assigns and does not extend to any other person. This covenant not to sue shall survive the Termination of this Consent Order in accordance with the terms set forth in Section 38 (Termination).

B. Reservation of Rights:

1. Nothing herein shall prevent NMED from seeking legal or equitable relief, either administratively or judicially, to enforce the requirements of this Consent Order.

Moreover, nothing herein shall prevent NMED from taking administrative action to implement the requirements of this Consent Order (e.g., approving or disapproving work plans, issuing Certificates of Completion). Finally, nothing herein shall prevent NMED from taking appropriate action to address conditions at the Facility that constitute an emergency situation or that present an immediate threat to public health or the environment.

2. The covenant not to sue set forth in Section 35.A does not pertain to any matters not within the scope of this Consent Order. NMED reserves, and this Consent Order is without prejudice to, all rights against DOE with respect to all such other matters, including the following:
  - a. Liability arising from the past, present, or future disposal or release of Contaminants outside the Facility to the extent NMED obtains information concerning such disposal or release following Termination of this Consent Order and such information was not available to NMED at the time of Termination;
  - b. Liability arising from the future disposal or release of Contaminants at the Facility to the extent NMED obtains information concerning such disposal or release following Termination of this Consent Order and such information was not available to NMED at the time of Termination;
  - c. Liability for damages for injury to, destruction of, or loss of natural resources and the costs of any natural resource damage assessment or other related costs, and liability for damages under any Federal or state statute (except for such liability, if any, under the HWA, SWA, or RCRA) or Federal or state common law, for past, present, or future releases of Contaminants to the environment;
  - d. Criminal liability; and
  - e. Liability for violation of Federal or state law, which occurs during or after implementation of the corrective action.

**SECTION 36. STIPULATED PENALTIES**

A. Process and Notice

1. Milestones and Campaign Completion Dates subject to stipulated penalties shall be determined in accordance with Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process). Other deliverables submitted under this Consent Order are not subject to stipulated penalties. In all circumstances, the Parties will work collaboratively consistent with Section 23 (Preparation / Review / Comment on Documents).
2. If a Milestone is extended pursuant to Section 28 (Extensions), DOE and NMED will agree either that:
  - a. a substitute Milestone should be established in lieu of the extended Milestone; or
  - b. the extended Milestone shall remain an enforceable deliverable subject to the extended date.

In either circumstance, the substitute or extended Milestone, as applicable, will be subject to stipulated penalties pursuant to this Section 36.

3. For each failure of DOE to meet a Milestone or Campaign Completion Date, NMED may assess a stipulated penalty in the amounts and pursuant to the procedures set forth in this Section 36. Stipulated penalties will not be paid from appropriated funds authorized to be expended at the Los Alamos National Laboratory for the purpose of environmental cleanup, provided that there is a legally available appropriation for the purpose of paying such stipulated penalties, or other monies become available through DOE's contractor accountability provisions referenced in Section 5.B. In the event stipulated penalties are assessed, DOE shall request, consistent with applicable Federal Government Executive Branch appropriations policies, a specific appropriation or utilize DOE's contractor accountability provisions referenced in Section 5.B to pay such stipulated penalties. If no other legally available appropriation is available to pay such penalties, then DOE shall pay the stipulated penalties from appropriated funds authorized to be expended at the Los Alamos National Laboratory for the purpose of environmental cleanup. Notwithstanding the foregoing, nothing in this

Section 36 shall be interpreted to require obligation or payment of funds in violation of the Antideficiency Act, 31 U.S.C. § 1341.

4. If NMED seeks to assess stipulated penalties pursuant to this Section 36, it shall provide a written notice of intent to do so to DOE. Such written notice of intent shall state the violation for which penalties are being assessed. DOE is not relieved of its requirement to complete the Milestone or Campaign after receiving NMED's written notice of intent to assess stipulated penalties.
5. If DOE does not complete a Milestone by the date established in Appendix B (including any extended date pursuant to Section 28), NMED may assess to DOE a stipulated penalty for the delinquent Milestone. Such penalty begins the day after the Milestone date, in an amount not to exceed the following:
  - a. \$5,000 for the first week; and
  - b. \$10,000 for each additional week.
6. If DOE does not complete a Campaign by the Campaign Completion Date established pursuant to Section 8 (including any extended date pursuant to Section 28), NMED may assess to DOE a stipulated penalty for the delinquent Campaign Completion Date. Such penalty begins the day after the Campaign Completion Date, in an amount not to exceed the following:
  - a. \$5,000 for the first week; and
  - b. \$10,000 for each additional week.
7. NMED may, in its discretion, agree to reduce or waive the stipulated penalties that would otherwise be due under this Section 36. For example, NMED, may, in its discretion reduce the stipulated penalty amount if a portion of a Milestone or Campaign has been achieved prior to expiration of the Milestone date or Campaign Completion Date, as applicable.
8. The Parties agree that the use of Supplemental Environmental Projects (SEPs) is often a preferable mechanism to fulfill a stipulated penalty obligation. NMED may, in its discretion, approve DOE's use of SEPs to satisfy any stipulated penalties issued pursuant to this Consent Order.

- a. Any SEP proposed by DOE must be:
    - i. Environmentally beneficial, such that it improves, protects, or reduces risks to public health or the environment for one or more areas and communities adjoining the Facility, or one or more of the Four Accord Pueblos;
    - ii. A project that DOE had not already initiated before the stipulated penalty was issued; and
    - iii. Not otherwise required by Federal, state, or local law or regulation.
  - b. NMED agrees to consider any SEP proposal(s) meeting the criteria found in Section 36.A.8. Upon written submission of a SEP proposal(s) by DOE and during consideration of such SEP proposal(s) by NMED, the remittance of any stipulated penalties associated with the proposed SEP(s) shall be tolled. Should NMED decline to accept a proposed SEP to satisfy a stipulated penalty, such decision shall not be subject to the Dispute Resolution provisions in Section 25.
9. DOE shall be liable for stipulated penalties only for failure to meet a Milestone listed in Appendix B or a Campaign Completion Date established pursuant to Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process).
10. DOE shall not be obligated to pay stipulated penalties until NMED makes a written demand for payment of stipulated penalties, which is distinct from the notice of intent to assess stipulated penalties specified in Section 36.A.4. After NMED has provided a notice of intent to assess stipulated penalties to DOE, NMED may make a written demand for payment of stipulated penalties either:
- a. After DOE completes the Milestone or Campaign for which NMED has provided a notice of intent to assess stipulated penalties; or
  - b. Prior to DOE completing the Milestone or Campaign for which NMED has provided a notice of intent to assess stipulated penalties; provided that NMED may not assess or demand, and DOE shall not pay, stipulated penalties more than once for any week of delinquency.

B. Procedure for Payment

1. Stipulated penalties under this Section 36 shall be due within forty-five (45) days from the date that NMED makes a written demand for payment of stipulated penalties.
2. Interest shall accrue on all stipulated penalties not paid when due at the rate specified in 28 U.S.C. § 1961. Interest shall accrue from the date the penalty is due until the date it is paid.
3. Payment shall be made by DOE by wire into an account that NMED so designates, ACH electronic payment as communicated in writing by NMED, or by check made payable to the State of New Mexico. Any checks made to the State of New Mexico must be delivered to:

LANL Consent Order DAM  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, New Mexico 87505-6303

4. Payment shall be accompanied by a transmittal letter referencing this Consent Order. A copy of the transmittal letter shall be delivered to the attorney for NMED at the following address:

*First class mail address:*

Office of General Counsel  
New Mexico Environment Department  
Post Office Box 5469  
Santa Fe, New Mexico 87502

*Overnight delivery address:*

Office of General Counsel  
New Mexico Environment Department  
1190 St. Francis Drive  
Santa Fe, New Mexico 87501

C. Reservation of Rights

NMED reserves the right to seek other appropriate relief, in lieu of stipulated penalties under this Section 36, for any failure of DOE to meet Milestones or Campaign Completion Dates. If, however, NMED elects to assess stipulated penalties pursuant to the provisions of this Section 36, NMED will not seek a separate civil penalty or other monetary relief for the alleged noncompliance identified in the NMED notice pursuant to Section 36.A.

**SECTION 37. ENFORCEABILITY**

A. This Consent Order is an enforceable document. 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, subject, however, to the provisions of Section 36 (Stipulated Penalties), which apply where the State has sought stipulated penalties pursuant to this Consent Order.

B. The State may take the following actions, or some combination of the following actions, to enforce the requirements of this Consent Order: issue a compliance order under Section 74-4-10 of the HWA seeking injunctive relief or civil penalties for DOE's noncompliance with the requirements of the Consent Order; file a civil action under Sections 74-4-10 and 74-4-10.1(E) of the HWA or Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), seeking injunctive relief or civil penalties for alleged violations of the Consent Order; and file an action seeking criminal penalties under Section 74-4-11 of the HWA. Each requirement of this Consent Order is an enforceable "requirement" of the HWA within the meaning of Section 74-4-10 and an enforceable "requirement" of RCRA within the meaning of Section 7002(a)(1)(A), 42 U.S.C. § 6972(a)(1)(A). The State further maintains that the list of authorities identified in this Section 37.B is not exhaustive and reserves all rights to take any action authorized by law to enforce the requirements of this Consent Order. The State maintains that citizens may sue to enforce the requirements of this Consent Order pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), if DOE violates those requirements.

C. DOE reserves any and all rights and defenses to any enforcement action taken by the State or any citizen, and nothing in this Consent Order will constitute a waiver of such rights or defenses.

**SECTION 38. TERMINATION**

A. The Parties agree that this Consent Order Terminates when NMED concurs, pursuant to Section 8.E, that corrective action activities for the last Campaign are complete.

**SECTION 39. EFFECTIVE DATE AND APPLICABILITY OF REVISIONS**

The effective date of this Consent Order is the date on which both Parties have signed the Consent Order. As provided in Section 33.A, modifications to this Consent Order shall become effective upon the date on which such modifications are signed by both Parties. Unless explicitly provided otherwise, modifications pursuant to Section 33.A shall apply prospectively only.

**APPENDICES**

LIST OF ACRONYMS

APPENDIX A-SOLID WASTE MANAGEMENT UNIT/AREA OF CONCERN LIST

APPENDIX B-MILESTONES AND TARGETS

APPENDIX C-FUTURE CAMPAIGNS

APPENDIX D-NMED DOCUMENT APPROVAL LIST AND REVIEW TIMFRAMES

APPENDIX E-EXAMPLE DOCUMENT TEMPLATES

APPENDIX F-SAMPLING/ANALYTICAL/FIELD METHOD REGULATORY GUIDANCE

APPENDIX G-INDEPENDENT AUDITS

The modifications to this Consent Order are hereby AGREED and CONSENTED TO by the Parties, pursuant to Section 33.A:

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[INSERT]

Date:

[INSERT]

New Mexico Environment Department

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[INSERT]

Date:

[INSERT]

U.S. Department of Energy

## APPENDIX D

### NMED DOCUMENT APPROVAL LIST AND REVIEW TIMEFRAMES

### Documents Subject to NMED Approval and NMED Review Timeframes

	<b>Document</b>	<b>Section</b>	<b>Review Time (Days)</b>
1.	Work Performed and Documentation Submitted under 2005 Consent Order	6.B	120
2.	Revised Interim Facility-Wide Groundwater Monitoring Plan	12.B	90
3.	RCRA Facility Investigation Work Plan	13.C	90
4.	RCRA Facility Investigation Report	13.G	120
5.	Area of Contamination Request	14.C	30
6.	Interim Measures Work Plan	15.C	90
7.	Interim Measures Report	15.D	120
8.	Emergency Interim Measures – Interim Measures Report	15.E	120
9.	Corrective Measures Evaluation Report	16.E and 16.G	280
10.	Corrective Measures Implementation Plan	18.B	210
11.	Corrective Measures Implementation Report	18.C	280
12.	Accelerated Corrective Action Report	19.D	120
13.	Presumptive Remedy Implementation Plan	19.E	150
14.	Presumptive Remedy Completion Report	19.E	180
15.	Certificates of Completion	21.B	120

APPENDIX G  
INDEPENDENT AUDITS

#### A. Pilot Audit

1. Within one (1) year after [INSERT DATE], the Parties agree to commence a pilot audit pursuant to this Appendix G.
2. After the conclusion of this pilot audit, the Parties shall meet to discuss the benefits and burdens of conducting the pilot audit, and the feasibility and utility of conducting future audits. If the Parties agree to future audits, such audits shall be conducted pursuant to this Appendix G.

#### B. Procedures and Scope

1. An independent third-party audit shall examine the effectiveness of the Consent Order. The audit will evaluate the performance of each Party under the Consent Order, including whether the Parties are adhering to the general purposes (set forth in Section 2.B) and principles (set forth in Section 2.D).
2. The Parties will agree to the independent third-party that will conduct the audit, and the cost of such audit will be shared equally between the Parties.
3. As part of the audit, the independent third-party will conduct public scoping meetings and incorporate public feedback provided during these meetings to develop its lines of inquiry for the audit.
4. The independent third-party auditor will prepare a report that documents findings, opportunities for improvement, recommendations, and best practices. The Parties will publish these reports on their respective websites.

#### C. Timing

If the Parties agree (pursuant to Section A.2 of Appendix G) to conduct future audits: (1) such audits would be conducted no more than once every four (4) years; and (2) the last audit before each ten (10) year review described in Section 34.D must be completed at least one (1) year before such ten (10) year review.

# **Attachment B**

**SWMUs and AOCs with Request for Certificate of Completion Pending with NMED**

Count	SWMU/AOC	Unit #	Unit Type	Campaign	Aggregate Area
1	SWMU	00-019	Former Wastewater Treatment Plant, Central	Historical Properties Completion Campaign	Pueblo Canyon
2	AOC	00-027	Storage Area-DP Road	Historical Properties Completion Campaign	Middle Los Alamos Canyon
3	AOC	00-030(eS)	Septic Tank	Historical Properties Completion Campaign	Pueblo Canyon
4	AOC	00-030(f)	Septic Tank	Historical Properties Completion Campaign	Pueblo Canyon
5	SWMU	00-030(g)	Former Septic Tank (near old Catholic Church parking lot)	Historical Properties Completion Campaign	Pueblo Canyon
6	AOC	00-030(h)	Former Septic Tank (near new Catholic Church)	Historical Properties Completion Campaign	Pueblo Canyon
7	SWMU	03-002(c)	Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
8	AOC	03-004(c)	Storage Area	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
9	AOC	03-004(d)	Storage Area	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon

Count	SWMU/AOC	Unit #	Unit Type	Campaign	Aggregate Area
10	AOC	03-007	Firing Site	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
11	SWMU	03-009(a)	Surface Disposal Site	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
12	SWMU	03-009(i)	Surface Disposal Site	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
13	SWMU	03-012(b)	Operational Release	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
14	AOC	03-014(b2)	Outfall Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
15	SWMU	03-014(k)	Sludge Drying Bed Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
16	SWMU	03-014(l)	Sludge Drying Bed Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
17	SWMU	03-014(m)	Sludge Drying Bed Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
18	SWMU	03-014(n)	Sludge Drying Bed Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
19	SWMU	03-014(o)	Sludge Drying Bed Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
20	SWMU	03-014(u)	Holding Tank Associated with Former WWTP	Sandia Canyon Watershed Campaign	Upper Sandia Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
21	SWMU	03-015	Outfall	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
22	SWMU	03-021	Outfall from Building 03-170	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
23	SWMU	03-029	Asphalt Batch Plant (disposal area)	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
24	SWMU	03-045(a)	Outfall from Building 03-22	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
25	SWMU	03-045(f)	Outfall from Building 03-223	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
26	SWMU	03-045(g)	Storm Drain	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
27	SWMU	03-045(h)	Outfall from Cooling Tower 03-187	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
28	AOC	03-047(g)	Soil Contamination from Former Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
29	SWMU	03-049(e)	Outfall	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
30	AOC	03-051(c)	Soil Contamination from Vacuum Pump Leaking	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
31	AOC	03-052(b)	Storm Drainage	Sandia Canyon Watershed Campaign	Upper Sandia Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
32	SWMU	03-052(f)	Outfall from Building 03-38	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
33	AOC	03-053	Building 03-141 Basement Area and Floor Drains	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
34	SWMU	03-054(e)	Outfall from Building 03-29	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
35	SWMU	03-056(a)	Oil Storage Facility	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
36	SWMU	03-056(d)	Drum Storage	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
37	AOC	03-056(k)	Container Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
38	SWMU	03-059	Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
39	AOC	C-03-006	Spill/Non-Intentional Release Area	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
40	SWMU	04-003(a)	Outfall Associated with Former Photo-Processing Building 04-07	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
41	AOC	04-004	Soil Contamination from Former Photo-Processing Building 04-07	Supplemental Investigation Reports Campaign	Upper Cañada del Buey

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
42	SWMU	11-005(a)	Septic System	Supplemental Investigation Reports Campaign	S-Site
43	SWMU	11-005(b)	Septic System	Supplemental Investigation Reports Campaign	S-Site
44	SWMU	11-005(c)	Outfall from Former Building 11-2	Supplemental Investigation Reports Campaign	S-Site
45	SWMU	11-006(a)	Sump	Supplemental Investigation Reports Campaign	S-Site
46	SWMU	11-006(b)	Catch Basin System	Supplemental Investigation Reports Campaign	S-Site
47	SWMU	11-006(c)	Catch Basin System	Supplemental Investigation Reports Campaign	S-Site
48	SWMU	11-006(d)	Catch Basin System	Supplemental Investigation Reports Campaign	S-Site
49	SWMU	11-011(b)	Outfall from Building 11-30A	Supplemental Investigation Reports Campaign	S-Site
50	SWMU	11-011(d)	Outfall from Building 11-24	Supplemental Investigation Reports Campaign	S-Site

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
51	AOC	C-11-002	Soil Contamination Associated with Former Structure 11-12	Supplemental Investigation Reports Campaign	S-Site
52	SWMU	13-001	Firing Site	Supplemental Investigation Reports Campaign	S-Site
53	SWMU	13-002	Landfill	Supplemental Investigation Reports Campaign	S-Site
54	SWMU	13-004	Disposal Pit - existence not determined	Supplemental Investigation Reports Campaign	S-Site
55	AOC	14-001(a)	Firing Site	Supplemental Investigation Reports Campaign	Cañon de Valle
56	AOC	14-001(b)	Firing Site	Supplemental Investigation Reports Campaign	Cañon de Valle
57	AOC	14-001(c)	Firing Site	Supplemental Investigation Reports Campaign	Cañon de Valle
58	AOC	14-001(d)	Firing Site	Supplemental Investigation Reports Campaign	Cañon de Valle
59	AOC	14-001(e)	Firing Site	Supplemental Investigation Reports Campaign	Cañon de Valle

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
60	SWMU	14-002(c)	Control Building 14-5	Supplemental Investigation Reports Campaign	Cañon de Valle
61	SWMU	14-003	Open Burning Ground	Supplemental Investigation Reports Campaign	Cañon de Valle
62	SWMU	14-006	Sump and/or Associated Equipment	Supplemental Investigation Reports Campaign	Cañon de Valle
63	SWMU	14-007	Septic System	Supplemental Investigation Reports Campaign	Cañon de Valle
64	SWMU	14-009	Surface Disposal Site	Supplemental Investigation Reports Campaign	Cañon de Valle
65	SWMU	14-010	Soil Contamination from Former Sump and Drain Lines	Supplemental Investigation Reports Campaign	Cañon de Valle
66	AOC	C-14-001	Soil Contamination Associated with Former Magazine 14-1	Supplemental Investigation Reports Campaign	Cañon de Valle
67	AOC	C-14-004	Soil Contamination Associated with Former Electronics Shop 14-7	Supplemental Investigation Reports Campaign	Cañon de Valle

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
68	AOC	C-14-005	Soil Contamination Associated with Former Storage Building 14-8	Supplemental Investigation Reports Campaign	Cañon de Valle
69	AOC	C-14-007	Soil Contamination Associated with Former Storage Building 14-10	Supplemental Investigation Reports Campaign	Cañon de Valle
70	AOC	C-14-008	Soil Contamination Associated with Former Magazine 14-11	Supplemental Investigation Reports Campaign	Cañon de Valle
71	AOC	C-14-009	Soil Contamination Associated with Former Magazine 14-13	Supplemental Investigation Reports Campaign	Cañon de Valle
72	SWMU	15-004(i)	The Gulch Firing Site	Upper Water Watershed Campaign	Cañon de Valle
73	AOC	15-005(b)	Container Storage Area	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons
74	SWMU	15-007(a)	Material Disposal Area N (MDA N)	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons
75	SWMU	15-010(a)	Septic System	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons
76	AOC	C-15-004	Former Transformer Station	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
77	AOC	C-15-005	Soil Contamination Associated with Former Laboratory and Building	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons
78	AOC	C-15-006	Soil Contamination Associated with Former Building 15-7	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons
79	SWMU	16-001(e)	Dry Well	Supplemental Investigation Reports Campaign	S-Site
80	SWMU	16-003(d)	Sumps	Supplemental Investigation Reports Campaign	S-Site
81	SWMU	16-003(e)	Sumps	Supplemental Investigation Reports Campaign	S-Site
82	SWMU	16-003(g)	Sumps	Supplemental Investigation Reports Campaign	S-Site
83	AOC	16-003(p)	Sump	Supplemental Investigation Reports Campaign	S-Site
84	SWMU	16-004(d)	Sludge Drying Bed	Supplemental Investigation Reports Campaign	S-Site
85	SWMU	16-004(f)	Sludge Drying Bed	Supplemental Investigation Reports Campaign	S-Site

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
86	SWMU	16-017(w)-99	Former Storage Magazine 16-73	Supplemental Investigation Reports Campaign	S-Site
87	AOC	16-024(a)	Soil Contamination from Former Magazine 16-488	Supplemental Investigation Reports Campaign	S-Site
88	AOC	16-024(m)	Soil Contamination from Former Magazine 16-66	Supplemental Investigation Reports Campaign	S-Site
89	AOC	16-024(n)	Soil Contamination from Former Magazine 16-84	Supplemental Investigation Reports Campaign	S-Site
90	AOC	16-024(u)	Soil Contamination from Former Magazine 16-481	Supplemental Investigation Reports Campaign	S-Site
91	SWMU	16-025(d2)	Soil Contamination from Former Structure 16-480	Supplemental Investigation Reports Campaign	S-Site
92	SWMU	16-026(b)	Outfall from Structure 16-307	Supplemental Investigation Reports Campaign	S-Site
93	SWMU	16-026(c)	Outfall from Building 16-305 Drain	Supplemental Investigation Reports Campaign	S-Site
94	SWMU	16-026(d)	Outfall from Building 16-303	Supplemental Investigation Reports Campaign	S-Site

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
95	SWMU	16-026(z)	Outfall from Building 16-306	Supplemental Investigation Reports Campaign	S-Site
96	AOC	16-027(a)	Transformer	Upper Water Watershed Campaign	Cañon de Valle
97	AOC	16-027(b)	Transformer	Upper Water Watershed Campaign	Cañon de Valle
98	SWMU	16-029(a)	Sumps	Supplemental Investigation Reports Campaign	S-Site
99	SWMU	16-029(b)	Sumps	Supplemental Investigation Reports Campaign	S-Site
100	SWMU	16-029(c)	Sumps	Supplemental Investigation Reports Campaign	S-Site
101	SWMU	16-031(h)	Outfall from Former Building 16-478	Supplemental Investigation Reports Campaign	S-Site
102	SWMU	16-034(m)	Soil Contamination from Former Laboratory 16-86	Supplemental Investigation Reports Campaign	S-Site
103	SWMU	16-035	Soil Contamination from Former Control Bunker 16-2 (renumbered to 16-476)	Supplemental Investigation Reports Campaign	S-Site

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
104	SWMU	16-036	Soil Contamination from Battleship Bunkers 16-477 and 16-478	Supplemental Investigation Reports Campaign	S-Site
105	AOC	16-037	Aboveground Tank - existence not verified	Upper Water Watershed Campaign	Cañon de Valle
106	AOC	C-16-001	Building (former platform)	Upper Water Watershed Campaign	Cañon de Valle
107	AOC	C-16-009	Soil Contamination Associated with Former Building 16-134	Upper Water Watershed Campaign	Cañon de Valle
108	AOC	C-16-015	Soil Contamination Associated with Former Structure 16-143	Upper Water Watershed Campaign	Cañon de Valle
109	AOC	C-16-018	Soil Contamination Associated with Former Aboveground Tank	Upper Water Watershed Campaign	Cañon de Valle
110	AOC	C-16-036	Soil Contamination Associated with Former Septic System	Upper Water Watershed Campaign	Cañon de Valle
111	AOC	C-16-041	Soil Contamination Associated with Former Building 16-198	Upper Water Watershed Campaign	Cañon de Valle

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
112	AOC	C-16-044	Soil Contamination Associated with Former Manhole	Upper Water Watershed Campaign	Cañon de Valle
113	AOC	C-16-050	Soil Contamination Associated with Former Building 16-482	Supplemental Investigation Reports Campaign	S-Site
114	AOC	C-16-060	Soil Contamination Associated with Former Storage Structure 16-479	Supplemental Investigation Reports Campaign	S-Site
115	AOC	C-16-061	Soil Contamination Associated with Building (former platform)	Upper Water Watershed Campaign	Cañon de Valle
116	AOC	C-16-068	Soil Contamination Associated with Former Building 16-522	Supplemental Investigation Reports Campaign	S-Site
117	AOC	C-16-070	Underground Tank	Upper Water Watershed Campaign	Cañon de Valle
118	AOC	C-16-072	Tank - existence not verified	Upper Water Watershed Campaign	Cañon de Valle
119	AOC	C-16-074	Storage Area	Supplemental Investigation Reports Campaign	S-Site
120	SWMU	20-001(a)	Landfill	Supplemental Investigation Reports Campaign	Lower Sandia Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
121	SWMU	20-001(b)	Landfill	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
122	SWMU	20-001(c)	Firing Site	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
123	SWMU	20-002(a)	Firing Site	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
124	SWMU	20-002(b)	Landfill	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
125	SWMU	20-002(c)	Firing Site	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
126	SWMU	20-002(d)	Firing Site	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
127	AOC	20-003(b)	Firing Site	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
128	AOC	20-003(c)	Firing Site	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
129	AOC	20-004	Former Septic System	Supplemental Investigation Reports Campaign	Lower Sandia Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
130	SWMU	31-001	Soil Contamination from Former Septic Tank	Historical Properties Completion Campaign	Pueblo Canyon
131	SWMU	33-004(b)	Septic System	Southern External Boundary Campaign	Chaquehui Canyon
132	SWMU	33-004(d)	Septic System	Southern External Boundary Campaign	Chaquehui Canyon
133	SWMU	33-004(g)	Drainline and Outfall Associated with Building 33-16	Southern External Boundary Campaign	Chaquehui Canyon
134	SWMU	33-004(h)	Drainline and Outfall Associated with Building 33-20	Southern External Boundary Campaign	Chaquehui Canyon
135	SWMU	33-004(j)	Outfall from Building 33-26	Southern External Boundary Campaign	Chaquehui Canyon
136	SWMU	33-004(m)	Septic Tank and Leach Field	Southern External Boundary Campaign	Chaquehui Canyon
137	SWMU	33-005(a)	Soil Contamination from Former Septic System	Southern External Boundary Campaign	Chaquehui Canyon
138	SWMU	33-005(b)	Soil Contamination from Former Drainline	Southern External Boundary Campaign	Chaquehui Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
139	SWMU	33-005(c)	Soil Contamination from Former Waste Line and Leach Field	Southern External Boundary Campaign	Chaquehui Canyon
140	SWMU	33-007(b)	Firing Sites	Southern External Boundary Campaign	Chaquehui Canyon
141	SWMU	33-008(a)	Landfill	Southern External Boundary Campaign	Chaquehui Canyon
142	SWMU	33-009	Surface Disposal Site	Southern External Boundary Campaign	Chaquehui Canyon
143	SWMU	33-010(f)	Surface Disposal Site (MDA K)	Southern External Boundary Campaign	Chaquehui Canyon
144	SWMU	33-010(g)	Surface Disposal Site	Southern External Boundary Campaign	Chaquehui Canyon
145	SWMU	33-010(h)	Surface Disposal Site	Southern External Boundary Campaign	Chaquehui Canyon
146	AOC	33-011(b)	Storage Area	Southern External Boundary Campaign	Chaquehui Canyon
147	SWMU	33-011(c)	Storage Area	Southern External Boundary Campaign	Chaquehui Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
148	SWMU	33-011(e)	Storage Area	Southern External Boundary Campaign	Chaquehui Canyon
149	SWMU	33-014	Burn Site	Southern External Boundary Campaign	Chaquehui Canyon
150	SWMU	33-015	Incinerator	Southern External Boundary Campaign	Chaquehui Canyon
151	SWMU	33-016	Sump	Southern External Boundary Campaign	Chaquehui Canyon
152	AOC	C-33-003	Soil Contamination	Southern External Boundary Campaign	Chaquehui Canyon
153	AOC	35-016(g)	Drain and Outfall from Building 35-213	Supplemental Investigation Reports Campaign	Middle Mortandad/Ten Site Canyons
154	AOC	35-016(h)	Storm Drains and Outfall Associated with Building 35-213	Supplemental Investigation Reports Campaign	Middle Mortandad/Ten Site Canyons
155	SWMU	36-006	Surface Disposal Site	Supplemental Investigation Reports Campaign	Potrillo/Fence Canyons
156	SWMU	42-001(a)	Soil Contamination from Former Incinerator Building 42-1	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
157	SWMU	42-001(b)	Soil Contamination from Former Ash Storage Tank	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
158	SWMU	42-001(c)	Soil Contamination from Former Ash Storage Tank	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
159	AOC	42-002(a)	Soil Contamination from Former Vacublaster and Storage Area	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
160	SWMU	42-002(b)	Soil Contamination from Former Decontamination Area	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
161	SWMU	42-003	Soil Contamination from Former Septic System	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
162	SWMU	46-003(b)	Septic System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
163	SWMU	46-003(c)	Septic System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
164	SWMU	46-003(d)	Septic System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
165	SWMU	46-003(e)	Septic System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
166	SWMU	46-003(f)	Septic System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
167	SWMU	46-003(g)	Septic System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
168	SWMU	46-004(a)	Waste Line	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
169	SWMU	46-004(a2)	Outfall Associated with Building 46-31	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
170	SWMU	46-004(b)	Soil Contamination Associated with Former Tank	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
171	SWMU	46-004(c2)	Outfall from Building 46-1	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
172	SWMU	46-004(d)	Dry Well	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
173	SWMU	46-004(d2)	Soil Contamination from Stack Emissions	Supplemental Investigation Reports Campaign	Upper Cañada del Buey

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
174	SWMU	46-004(e)	Dry Well	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
175	AOC	46-004(e2)	Outfall from Building 46-42	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
176	SWMU	46-004(f)	Drain Associated with Building 46-24	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
177	AOC	46-004(f2)	Outfall from Building 46-31	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
178	SWMU	46-004(g)	Drains and Exhaust System	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
179	SWMU	46-004(r)	Outfall from Building 46-24	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
180	SWMU	46-004(s)	Outfall Associated with Building 46-1	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
181	SWMU	46-004(v)	Outfall from Building 46-87	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
182	SWMU	46-004(w)	Outfall from Building 46-59	Supplemental Investigation Reports Campaign	Upper Cañada del Buey

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
183	SWMU	46-004(x)	Outfall from Building 46-31	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
184	SWMU	46-004(y)	Outfall from Building 46-31	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
185	SWMU	46-004(z)	Outfall from Building 46-31	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
186	SWMU	46-005	Surface Impoundment	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
187	SWMU	46-006(a)	Operational Release	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
188	SWMU	46-006(c)	Operational Release	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
189	SWMU	46-007	Operational Release	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
190	SWMU	46-008(a)	Storage Area	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
191	SWMU	46-008(d)	Storage Area	Supplemental Investigation Reports Campaign	Upper Cañada del Buey

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
192	SWMU	46-008(e)	Storage Area	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
193	SWMU	46-008(f)	Storage Area	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
194	SWMU	46-009(a)	Landfill	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
195	SWMU	46-009(b)	Surface Disposal Site	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
196	SWMU	46-010(d)	Storage Area	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
197	AOC	C-46-002	Soil Contamination from Stack Emissions - non-intentional release	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
198	AOC	C-46-003	Soil Contamination from Stack Emissions - non-intentional release	Supplemental Investigation Reports Campaign	Upper Cañada del Buey
199	AOC	48-001	Air Exhaust System	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon

<b>Count</b>	<b>SWMU/AOC</b>	<b>Unit #</b>	<b>Unit Type</b>	<b>Campaign</b>	<b>Aggregate Area</b>
200	SWMU	48-003	Soil Contamination Associated with Former Septic System	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
201	SWMU	48-007(b)	Outfall from Building 48-1	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
202	SWMU	48-007(c)	Outfall from Building 48-1	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
203	SWMU	48-007(f)	Outfall from Building 48-46	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
204	AOC	48-011	Disposal Shaft	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
205	SWMU	50-004(a)	Soil Contamination from Former Waste Lines	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
206	SWMU	50-004(b)	Soil Contamination from Former Vault and Tanks	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
207	SWMU	50-004(c)	Soil Contamination from Former Waste Lines and Manholes	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon
208	SWMU	50-006(a)	Operational Release	Supplemental Investigation Reports Campaign	Upper Mortandad Canyon

Count	SWMU/AOC	Unit #	Unit Type	Campaign	Aggregate Area
209	SWMU	53-001(a)	Storage Area	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
210	AOC	53-009	Aboveground Tanks	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
211	AOC	53-010	Container Storage	Supplemental Investigation Reports Campaign	Lower Sandia Canyon
212	SWMU	60-002	Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
213	AOC	60-004(f)	Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
214	SWMU	60-006(a)	Septic System	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
215	SWMU	60-007(b)	Operational Release	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
216	SWMU	61-002	Transformer Storage Area	Sandia Canyon Watershed Campaign	Upper Sandia Canyon
217	SWMU	73-001(a)	Landfill	Other	Pueblo Canyon
218	SWMU	73-001(b)	Soil Contamination from Former Waste oil Pit	Other	Pueblo Canyon
219	SWMU	73-001(c)	Bunkers	Other	Pueblo Canyon
220	SWMU	73-001(d)	Landfill	Other	Pueblo Canyon
221	SWMU	73-004(d)	Soil Contamination form Former Septic Tank	Other	Pueblo Canyon