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James C. Kenney
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Deputy Secretary

October 30, 2020

Arturo Duran, Designated Agency Manager
U. S. Department of Energy
Environmental Management
Los Alamos Filed Office
P. O. Box 1663 MS M 984
Los Alamos, NM 87544

**RE: DISPUTE RESOLUTION REQUEST FOR EXTENSION OF INFORMAL NEGOTIATION PHASE
2016 COMPLIANCE ORDER ON CONSENT
LOS ALAMOS NATIONAL LABORATORY
EPA ID#NM0890010515**

Dear Mr. Duran,

The New Mexico Environment Department (NMED) is in receipt of the U.S. Department of Energy's (DOE) October 28, 2020 letter regarding continuation of informal dispute resolution related to the 2016 Compliance Order on Consent.

On October 1, 2020, NMED initiated dispute resolution concerning DOE's failure to provide an adequate plan for federal fiscal year 2021. DOE's proposed plan was noticeably deficient as it would slow down and delay necessary clean-up progress contrary to protecting public health and the environment. Despite both parties engaging in subsequent discussions, no agreement has been reached. As an example, the parties failed to reach consensus on multiple groundwater monitoring wells, including: R71, R73, R74, and R75.

Since dispute resolution was initiated, DOE has not provided NMED with a revised written proposed milestone document (also known as "Appendix B" to 2016 Compliance Order on Consent). In addition, DOE has not provided NMED any evidence or commitment of appropriated funding prior to or subsequent to the initiation of dispute resolution. DOE has not provided NMED with documentation of any formal actions it has initiated to assure adequate funding for the necessary activities over the next three years.

Related to funding, DOE indicated that other environmental regulatory obligations may be of greater budgetary priority than those obligations under the 2016 Compliance Order on Consent. These matters are outside the scope of Appendix B.

Given DOE's lack of written technical and financial commitment during dispute resolution, your request to extend informal dispute resolution is declined. As such, each Designated Agency Manager must provide a written statement of position to their Tier 1 Officials within ten (10) business days of the date of this letter and schedule a meeting between Tier 1 Officials within 15 days of receipt of the statements of position, or other agreed upon date.

Pursuant to the NMED Delegation Order dated September 14, 2020, the Cabinet Secretary has delegated the authority to sign Consent Order correspondence to the Chief of the Hazardous Waste Bureau. You may contact me directly about this matter if you have any questions.

Sincerely,

Kevin M. Pierard, Chief
Hazardous Waste Bureau
New Mexico Environment Department

Cc: Stephanie Stringer, NMED Resource Protection Division Director
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