
Exhibit E

to the

Declaration of Timothy A. Dolan in Support of
Defendant Los Alamos National Security, LLC's
Request for Judicial Notice in Support of
Defendant Los Alamos National Security, LLC's
Motions to Dismiss Plaintiff's First Amended Complaint
or Alternatively for Court Abstention

**STATE OF NEW MEXICO
ENVIRONMENT DEPARTMENT**

COMPLIANCE ORDER ON CONSENT

U.S. DEPARTMENT OF ENERGY

Los Alamos National Laboratory

June 2016

LANL COMPLIANCE ORDER ON CONSENT

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I. 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 NMAC, for the limited purpose of addressing the corrective action activities, including requirements, concerning groundwater contaminants listed at 20.6.2.3103 New Mexico Administrative Code (NMAC), toxic pollutants listed at 20.6.2.7.WW 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.WW 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, but not limited to, 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.

II. 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 VII (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.WW 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.

E. Exclusions from Scope:

This Consent Order imposes no requirements on any areas of concern (AOCs) and solid waste management units (SWMUs) 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 VII.E.

III. 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 CFR 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.

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 will result 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 currently performing 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 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 this 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 the 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.

V. PARTIES

A. The Parties to this Consent Order are NMED and DOE, as defined in Section III.CC (Definitions).

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.

VI. 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 XXIII (Preparation / Review / Comment on Documents).

VII. 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 XXXVII (Termination) of this Consent Order.
- 5) Newly created SWMUs or AOCs from non-permitted operations.

B. Consistent with Subsection A above, 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 Subsection A above is consistent with the intent of the Permit and, further, that any renewed Permit shall include the five excepted items described in Subsection A above.

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 Subsection A.1)-5) above, 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 Subsection A.1)-5) above, 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 Subsection A.1)-5) above, 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 Subsection A above. This Consent Order is an “enforceable document” pursuant to the requirements of 40 CFR § 264.101.

D. Consistent with Sections A through C of this Section, 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 XXI (Certification of Completion), 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 XXXVII, 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, but not limited to, opportunities for public participation, including 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, but not limited to, opportunities for public participation, including 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.

VIII. CAMPAIGN APPROACH

A. To carry out the purposes set forth in Section II (Purpose and Scope) above, the Parties agree to use a structure called the "campaign approach." As described more fully below, corrective action activities required by this Consent Order will be organized into campaigns, generally based upon a risk-based approach to grouping, prioritizing, and accomplishing corrective action activities at SWMUs and AOCs. A campaign may consist of one or more projects; campaigns and projects consist of one or more tasks and deliverables. Campaigns, projects, tasks, and deliverables may be subject to two types of deadlines: milestones, which are enforceable; or targets, which are not enforceable.

B. PROCESS FOR ESTABLISHING CAMPAIGNS

- 1) NMED shall maintain a list of the SWMUs and AOCs subject to this Consent Order in Appendix A (Solid Waste Management Unit/Area of Concern List). The list in Appendix A shall be updated if new SWMUs and AOCs are added

through the process in Section X (Newly Discovered Releases). Appendix A shall also identify the status of corrective action activities at each SWMU and AOC, as defined in Subsection B.2 of this Section. The information in Appendix A will be updated annually during the annual planning process defined in Subsection C of this Section.

2) Appendix A shall identify the status of corrective action activities under this Consent Order for each SWMU and AOC in accordance with Subsection C. Because each SWMU or AOC may not proceed through each status category, 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
- j) Deferred – Full investigation and/or remediation of the SWMU or AOC is deferred until such time as the SWMU or AOC is taken out of service or otherwise becomes accessible (e.g., firing sites and active facilities).

3) To facilitate prioritization and completion of the corrective action activities of this Consent Order, DOE shall organize corrective action activities into campaigns as described above. Each campaign may address corrective action activities for one or more SWMUs or AOCs and may be organized geographically or as needed to facilitate execution of work. The Parties intend campaigns to capture the full range of corrective action activities needed to certify completion of corrective actions in accordance with Section XXI

(Certification of Completion). However, it may be appropriate for one or more campaigns to be implemented in phases through multiple projects (e.g., interim measures). The list of SWMUs and AOCs in Appendix A shall identify the campaign(s) to which each SWMU and AOC is assigned.

4) Appendix B (Milestones and Targets) shall list milestones for campaigns, projects, tasks, and/or deliverables for the current fiscal year, as well as targets for the next two years (FY+1, FY+2) for campaigns, projects, tasks, and/or deliverables planned for the next two FYs, which substantially contribute to completion of the campaigns. Milestones scheduled for the current FY are enforceable and subject to Stipulated Penalties under Section XXXV

(Stipulated Penalties); targets are not enforceable and not subject to stipulated penalties.

- a) The Parties agree to identify in Appendix B between 10 and 20 milestones for each current FY and between 10 and 20 targets for each of the next two years (FY+1, FY+2).
- b) For milestones that do not require submission of deliverables to NMED, the Parties agree to define validation mechanisms for such milestones, i.e., proof that DOE has completed such milestones, as part of the annual planning process pursuant to Subsection C below. Validation mechanisms shall include, after DOE meets the date for the milestone listed in Appendix B, written certification by NMED of milestone validation within a specified timeframe after DOE meets that date.
- c) The Parties agree that DOE's project plans and tools will be used to identify proposed milestones and targets. These project plans and tools will also be used to evaluate changes to milestones and targets. The Parties further agree to identify and utilize a list of other submittals that are associated with the milestones listed in Appendix B and facilitate implementation of the campaigns by enabling the Parties to allocate resources. Such other submittals will not be listed as milestones or targets in Appendix B.

- 5) Campaigns shall be listed and described in Appendix C (Campaigns). The Parties agree that the ordering of campaigns in Appendix C reflects a sequence that implements corrective action activities based upon various factors, for example, risk, resources, and geography. The organization and sequence of campaigns in Appendix C are subject to change. Should changes to the organization and sequence of campaigns 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 (Cochiti Pueblo, Pueblo de San Ildefonso, Santa Clara Pueblo and Jemez Pueblo), NMED must confer with appropriate representatives of such municipalities, counties and pueblos and allow them to comment on the new proposed organization and sequence of campaigns. Comments from such municipalities, counties and pueblos shall be considered when modifying the organization and sequence of campaigns.

C. ANNUAL PLANNING PROCESS

- 1) The annual planning process is the process the Parties will use to update Appendix A, Appendix B, and Appendix C, as appropriate.
- 2) Prior to the end of the first quarter of each FY, DOE will provide a revision of Appendix A to NMED indicating proposed changes (e.g., redline). This revision will provide an update of the status of SWMUs and AOCs and add new SWMUs and AOCs, if appropriate, based on the previous FY's corrective action activities. NMED shall review DOE's proposed revision and, if the revision is acceptable to NMED, the revision shall be incorporated into this Consent Order as Appendix A. Should the proposed revision not be acceptable to NMED, the Parties agree that the DAMs will meet within ten (10) business days to resolve NMED's concerns.
- 3) DOE shall update the milestones and targets in Appendix B on an annual basis, accounting for such factors as, for example, actual work progress, changed conditions, and changes in anticipated funding levels. This is called the annual planning process. For purposes of the annual planning process, milestones to be listed in the current FY's Appendix B shall be based on the FY+1 targets listed in the previous FY's Appendix B.

- a) To the extent possible, DOE will provide to NMED a forecast indicating potential, proposed changes to Appendix B (e.g., redline) by the end of July of each year. In order to facilitate this initial identification of potential, proposed changes to Appendix B, DOE shall review the existing FY+1 targets in Appendix B and identify in the forecast any foreseeable impacts (e.g., new information, Congressional appropriation marks, estimates for continuing resolutions) that could affect the FY+1 targets to enable the Parties to account for those foreseeable impacts before the Parties establish milestones for the next FY. At either Party's request, the DAMs will meet to discuss the forecast.
- b) Within fifteen (15) business days of DOE's receipt of its first FY appropriation (whether this is the full appropriation or an appropriation via continuing resolution), the DAMs shall meet to discuss the appropriation and any necessary revisions to the forecast, e.g., because DOE did not receive adequate appropriations from Congress to carry out proposed milestones listed in the forecast. Within thirty (30) business days after DOE receives this appropriation, DOE will provide a revision of Appendix B to NMED indicating proposed changes (e.g., redline) to the milestones and targets for which DOE determines it has received adequate appropriations to be carried out. Within fifteen (15) business days of NMED's receipt of this revision, NMED shall review DOE's proposed revision and, if the revision is acceptable to NMED, the revision shall be incorporated into this Consent Order as Appendix B. Should the proposed revision of Appendix B not be acceptable to NMED, the Parties agree that the DAMs will meet within ten (10) business days to resolve NMED's concerns.
- c) If DOE receives an adjustment to its appropriated levels (e.g., from continuing resolution to full year appropriation) or if the Parties agree that current milestones should be revised based on consideration of

new information (e.g., sampling or monitoring results), either Party may request a meeting of the DAMs within fifteen (15) business days to discuss proposed revisions to the milestones, if any. Within fifteen (15) business days after this meeting, DOE shall submit another proposed revision of Appendix B to NMED. Within fifteen (15) business days of NMED's receipt of this revision, NMED shall review DOE's proposed revision and, if the revision is acceptable to NMED, the revision shall be incorporated into this Consent Order as Appendix B. Should the proposed revision of Appendix B not be acceptable to NMED, the Parties agree that the DAMs will meet within ten (10) business days to resolve NMED's concerns.

d) Upon finalizing Appendix B, NMED shall post Appendix B to their website and schedule a public meeting to present any changes to the milestones and targets in Appendix B. The meeting will describe the actual work progress made the previous year, any changed conditions at the Facility that impacted the milestones and targets, changes in funding levels and any other factors that may have contributed to changes to the milestones and targets.

4) During each annual planning process, DOE shall also provide NMED with a date in which it estimates that all work under the Consent Order will be completed based upon the updated information in Appendices A and B.

5) Prior to the end of the first quarter of the FY, DOE may provide, as appropriate, a revision of Appendix C to NMED indicating proposed changes (e.g., redline) to descriptions, organization, and sequence of campaigns. NMED shall review DOE's proposed revision and, if the revision is acceptable to NMED, the revision shall be incorporated into this Order as Appendix C. Should the proposed revision of Appendix C not be acceptable to NMED, the Parties agree that the DAMs will meet within ten (10) business days to resolve NMED's concerns.