From:	Frazer Lockhart
To:	Roberts, Kathryn, NMENV
Subject:	Draft LANL Consent Order comments
Date:	Friday, May 13, 2016 1:05:06 PM
Attachments:	SN3 NMED DraftCO Comments r0a.xlsx Attach 1&2 to Draft CO cmts.docx image001.jpg

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Katie: I enjoyed talking to you at the April 28th meeting in Los Alamos. I have attached my comments for the Draft Consent Order for Los Alamos National Laboratory as an employee of Stoller Newport News Nuclear, usually referred to as SN3. SN3 has been involved in supporting Department of Energy, or DOE, cleanup work in New Mexico since 1989 with an office in Carlsbad, New Mexico. SN3 also has offices in other western states to perform environmental work for DOE, including Richland, Washington; Idaho Falls, Idaho; Grand Junction and Denver, Colorado; Las Vegas, Nevada; and Amarillo, Texas. We are currently in the process of opening an office in Los Alamos.

First and foremost I would like to congratulate the New Mexico Environmental Department, NMED, for their excellent work to negotiate this Draft Consent Order with the DOE, and release it for public comment. Action was needed and you have taken action to move the regulatory process in a positive direction.

Environmental cleanup from the legacy production of nuclear weapons is difficult, dangerous, and controversial – nowhere more so than at Los Alamos, the birthplace of nuclear weapons technology. The experience at Los Alamos has shown us all that priorities change, surprises occur, and mistakes occasionally happen. These aspects of environmental cleanup should not be viewed as negative, rather they should be expected for a program with this degree of uncertainty and complexity. The Draft Consent Order very appropriately is developed to recognize that need for flexibility in addressing the cleanup programs' many challenges, in a manner that is informed by new information, changes in technology, changes in available funding, and the interests of the surrounding stakeholders. Moreover, the Draft Consent Order stresses communication and collaboration, necessary elements to complete a program as difficult as this.

At the same time, this Draft Consent Order is not so flexible as to allow the DOE to avoid its cleanup responsibilities. The areas of known and potential concern are comprehensively documented, with the provision to include additional areas if warranted. Cleanup milestones and target goals are established in the near-term, when budget levels are known with greater certainty. Priorities will be revisited at least annually until the scope of the Draft Consent Order is fully completed. Public stakeholders will continue to have extensive access to characterization and monitoring information, and will have a voice in the consideration of interim and final cleanup remedies through the NMED exercise of their authority under the Resource Conservation and Recovery Act.

Many commenters will likely criticize multiple aspects of this Draft Consent Order, and clearly any such agreement can always be improved. However, our perspective on this Draft Consent Order is overall positive, and we state our support for the important step that NMED has taken with this Draft Consent Order. We recommend that NMED continue to move this initiative forward, and we look forward to a continuing role in the execution of the important environmental work at the Los Alamos National Laboratory.

Thank you for the opportunity to provide these comments, and please feel free to contact me for any clarification or additional information.

Frazer R. Lockhart, PMP, STS
Assistant Vice President
Phone: (303) 546-4420
Mobile: (303) 489-2471

Stoller Newport News Nuclear Comments - NMED Draft Consent Order

#	Draft CO Section/Sub-Section	Subject/Title	Page Number	Contractor Comment/Question
1	I.C.	Jurisdiction	3	Inclusion of CERCLA authority through EPA would provide leverage on radionuclides and the radioactive portion of mixed wastes, although would require more complex regulatory authority model. Workarounds in this draft to provide for some NMED control of radionuclide issues are generally good.
2	II.B.7)	Purpose and Scope of Consent Order	4	The document correctly identifies a purpose as "provide for effective public participation", but the Draft Consent Order provides minimal, detailed public process description. Recommend the following requirement be considered for inclusion, with an Appendix G created as the placeholder location: "The DOE shall develop in consultation with the NMED a Community Relations Plan that aligns with and supports the goals and precepts of this Consent Order. The Community Relations Plan will be completed within 180 days of the effective date of this Consent Order and included as Appendix G."
3	II.D.1)	Purpose and Scope of Consent Order	5	Recommend post-remedial monitoring, stewardship, and reporting be added to the process for corrective actions. These are necessary post-closure steps that both NMED and the public will require. While these steps don't need to be detailed in this agreement, they should be mentioned to provide a full regulatory cycle picture.
4	II.D.5)c)	Purpose and Scope of Consent Order	5	Consider also adding international lessons learned. DOE-EM has recently expanded their linkages to the United Kingdom and France for potential lessons.
5	III.K	Definitions	7	Execution of the DAM role is critical to success of this Consent Order. The DOE's lead EM Contractor, although not a DAM, will have routine interface with the DAMs for exection. Consider adding language here or III.L or other location to reflect this key DOE Contractor role: "DOE shall be responsible for satisfying the requirements of this Consent Order regardless of whether DOE carries out the requirements through its own employees, agents, and support contractors, or through its Legacy Cleanup Contractor. Upon the request of NMED, DOE shall provide the identity and work scope of its Legacy Cleanup Contractor and any first or second tier subcontractors used in carrying out the requirements of this Consent Order, including the names and positions of the key responsible individuals for executing those requirements."
6	III.P	Definitions	8	Suggest clarification that the "groundwater" requirement pertains to a potable or agricultural water supply. Many wells can produce water, but due to mineral content or salinity are unusable for any purpose.
7	III.BB	Definitions	9	Please clarify the status of the Legacy Cleanup Contractor if signatory to the agreement per last sentence in paragraph V.B, but not a Party.
8	III.MM	Definitions	10	"Fiscal year" is not defined. Recommend adding a definition or an affirmative statement that the New Mexico fiscal year is the same as the Federal fiscal year. Several uses of the term specify the Federal fiscal year, but this is not universal throughout the document.

9	VI.B	Work Already Committed/Submitted	22	The commitment to action in this paragraph is excellent, but will there be a 'bow-wave' effect which will be make it difficult for NMED to achieve this action consistent with the schedules in Appendix D? Best to start a new agreement with solid wins on both sides, not frustrating and overly difficult schedules.
10	VIII.A and Appendix C	Campaign Approach	25	The Campaign Approach is a powerful feature of this Draft Consent Order which provides for CERCLA-like grouping and consideration of remedies and risks. Excellent.
11	VIII.B.4)b)	Campaign Approach	27	Reaching and documenting agreement in advance for what will qualify as success will greatly facilitate the collaborative approach, and avoid future disputes.
12	VIII.C	Campaign Approach	28	Is the update process strictly on an annual basis, or could there be specific event-driven reasons to modify? Annual process is definitely preferred, but NMED might consider including provision for modification when a driver is of sufficient magnitude that the annual process is not sufficiently responsive, such as in VIII.C.3)c).
13	VIII.C.3)b)	Campaign Approach	29	Great process step to acknowledge the realities of the Federal budget process outside the control of DOE, yet provide for dialogue and tranparent communication.
14	VIII.C.3)c)	Campaign Approach	29	Good to provide for flexibility if appropriations change, but it is also important not to abuse this provision. Recommend setting more specific threshold criteria for events that would warrant change outside the annual cycle.
15	IX.M	Cleanup Objectives and Cleanup Levels	34	Provision to consider impractical remedy is very good, but in practice is brutally difficult to justify to the public why a risk process which allows greater contamination to remain is selected over an established standard. Call-out of EPA published guidance helps.
16	IX.N	Cleanup Objectives and Cleanup Levels	34	NMED may want to consider a more defined and explicit process to support their decision in the public forum. Ultimately, NMED will need to defend the decision, and the process needs to support NMED's decision as developed by the DOE, more so than maintaining NMED decision authority over the DOE. See comment 2 above.
17	XIII.A	Facility Investigation	39	NMED may also consider providing for notice of a delay, for example an activity is projected to start so notice is given, but than a delay occurs. I would hope the DAMs would have sufficiently open dialogue that this would naturally occur, but may be worth an explicit statement in this paragraph.
18	XIII.D	Facility Investigation	40	Consider adding the following clarifyng sentence: "The request for extension is a related but separate action from the written notification of change."
19	XIV.B	Areas of Contamination	41	Use of Area of Contamination is an excellent provision which provides for efficient and logical support of cleanup logistics.
20	XVI.C	Corrective Measures Evaluation	44	Great to call-out published EPA Guidance for these decision criteria. See comment 15.
21	XVI.F	Corrective Measures Evaluation	45	Good that this provision to acknowledge work under the 2005 Consent Order was included, even though it might seem obvious. Avoids future confusion, especially with the public stakeholders.

22	XX.	At Risk Work	49	This is a good provision to allow DOE work In advance of formal approval, but At Risk Work should never occur without notice to NMED. Recommend adding the following sentence: "The DOE shall provide notice to NMED by approved means no less than five work days before the start of any At Risk Work."
23	XXI.F	Certification of Completion of Corrective Action	51	DOE-EM discovered at Closure Sites and other active sites that post-cleanup and post-closure monitoring is a high interest item for the public. Future decisions at LANL will determine whether these stewardship responsibilities would be done by DOE-EM, turned over to the DOE Office of Legacy Management, or given back to the NNSA M&O. Recommend that NMED consider inclusion of a general expectation of a follow-on agreement to regulate and administer a post-legacy cleanup LANL. The Rocky Flats Legacy Management Agreement (available at this link http://www.lm.doe.gov/Rocky_Flats/Regulations.aspx) is one example of such an agreement. The Statement of Purpose on page 4 would provide the right level of key elements to include in this Draft Consent Order to point toward a follow-on agreement.
24	XXII.B	Designated Agency Managers	53	Prompt and open communication will become stifled without continuous involvement of a DAM-like individual from the Contractor. While clearly the formal communication is between DOE and NMED, a frequent and active informal communication role with the Contractor lead should be expected. See comment 5 above.
25	XXII.B	Designated Agency Managers	53	Focus on communication between DAMs is good, but also a good practice to schedule a routine status brief to Tier 1 and Tier 2 on some periodic basis. Suggest quarterly for Tier 1 and semi-annual for Tier 2.
26	XXII.C	Designated Agency Managers	53	Recommend DAM meeting no less than bi-monthly.
27	XXIII.C	Preparation / Review / Comment on Documents	54	Pre-submission review is a great idea for collaboration and communication.
28	XXIII.D and Appendix D	Preparation / Review / Comment on Documents	54	Target schedules should be maximums except for unique submissions. Bias for action argues for shorter schedules on both sides. Meeting the submission and review schedules will be one of the most difficult challenges, but is also critical to success of the Consent Order.
29	XXIII.E.1)	Preparation / Review / Comment on Documents	54	Important to provide means for staff to elevate for management attention so that a single minor issue or two aren't responsible for delaying an otherwise acceptable document.
30	XXIII.G.4)	Preparation / Review / Comment on Documents	56	I understand why DOE would want to retain authority to resubmit a disapproved document without a meeting, but it would generally be a bad idea. Sending documents back and forth between agencies without discussion is counter to a collaborative bias for action, and appears to an outsider as a continuation of past practices.
31	XXIII.J	Preparation / Review / Comment on Documents	57	Inclusion of new work into the future work plan will be tricky as budgets will almost certainly continue to be less than desired by both parties. Suggest modification of (1) to conclude: "…into future work plan during the annual planning cycle…".

32	XXV.C	Dispute Resolution	58	The general bias for action and open communication is evident throughout this Draft Consent Order. It is good to focus first on informal resolution, but this will be one of the most difficult areas requiring change in personal behavior patterns and trust-building on both sides. The Rocky Flats cleanup effort took on this behavior change by defining a "Consultative Process" and placing it within the Tri-Party Agreement. The most relevant text on the Consultative Process is included at Attachment 1. Also, an Appendix 2, Principles for Effective Dialogue and Communication at Rocky Flats, is included here as Attachment 2. Strongly recommend NMED consider including language from these examples to help facilitate the behavior changes which this Draft Consent Order will require.
33	XXV.C	Dispute Resolution	58	Agency disputes are typically of very high interest to the stakeholders. Recommend some acknowledgement of how disputes will be communicated to stakeholders be included.
34	XXVII.B	Access / Data / Document Availability	62	The last sentence in this paragrpah appears to be inconsistent, or at least unclear, with the requirement for a minimum 15 day notice in the first sentence.
35	XXX.C	Funding	65	I can understand why the State needs to make this reservation related to funding, however any adjustment in review times must also provide affirmative notice to the DOE as part of open and transparent communications. Recommend a statement be added requiring NMED to provide notice to DOE regarding any adjustments to review times or other schedule adjustments.
36	Appendix B	Milestones and Targets	All	Construct of the table is very good. It appears that while the body of the Draft Consent Order reflects a bias for cleanup action, the Appendix B table has a larger than expected number of paperwork actions (e.g., plans, reports, administrative actions). This may be a legitimate reflection of the LANL program status, or reflect a desire to 'clear the in-boxes' of older actions, but recommend NMED consider greater number of physical actions to align with the Draft Consent Order narrative.

ATTACHMENT 1 – Example Language extracted from Rocky Flats Cleanup Agreement

PART 7 CONSULTATION AND PROJECT COORDINATION

51. All Parties recognize that the successful implementation of this Agreement requires that each Party participate in the consultative process, as defined herein, in good faith. The Parties recognize that the consultative process represents a significant change from the manner in which the IAG was implemented. The Parties agree to utilize measures such as training programs, performance evaluation criteria, and Quality Action Teams to improve and ensure the success of the consultative process. The Parties also recognize that, as the Party responsible for project management, DOE bears a particular burden to initiate consultation with EPA and CDPHE to ensure the success of the consultative process.

52. "Consultation" and "the consultative process" mean the responsibility of one Party to meet and confer with another Party and any appropriate contractors in order to reach agreement among the Parties, to the extent possible, regarding a course of action. Consultation involves a cooperative approach to problem solving at the staff level. Consultation includes the responsibility to raise any concerns or suggestions regarding the implementation of this Agreement as soon as the concern or suggestion is identified. Consultation means timely participation at the staff or management level, as appropriate, to reach consensus among the regulators and DOE so that there is a clear understanding of the actions or direction to be taken based upon the outcome of the consultative process.

53. Consultation, in relation to local elected officials, local government managers, RFLII, CAB, other groups and citizens, will include consideration of their advice and comments pertaining to key policy and strategic decisions such as land use, water quality, storage or disposal options, decontamination and decommissioning, soils remediation, facilities reuse, public safety, and infrastructure. These organizations and persons will be invited to participate early in the formulation of such policies and prioritization of RFETS activities. This consultative process is not intended to replace the public comment periods required by law, but will, instead, be in addition to them.

54. Consultation, in the context of developing a written document, means that the Parties and any appropriate contractors shall meet to discuss the expectations regarding the document from its initial planning stages, through serial drafts, and up to the completion of the final document. Consultation also includes meeting informally to resolve disagreements, as appropriate, before invoking the dispute resolution process.

55. On March 31, 1995, the Parties all agreed to follow a set of "Principles for Effective Dialogue and Communication at Rocky Flats." These principles are attached hereto as Appendix 2.

56. Within 30 days of the effective date of this Agreement, the Parties shall jointly finalize a plan for training all appropriate staff for the effective implementation of this Agreement. The plan will include:

    a. a description of how the training will be used to foster good faith constructive implementation of the RFCA;
    b. time frames for conducting training;
    c. different levels of training as appropriate to the job description;
    d. use of RFETS, EPA, CDPHE, or third party professional instructors;
    e. provisions for conducting needs assessments as necessary to determine the need for updating training materials and implementing new employee training; and
    f. involvement of RFCA negotiators from each Party to participate in training.

ATTACHMENT 2 – Example Principles for Effective Dialogue and Communication

APPENDIX 2

Principles for Effective Dialogue

and Communication at Rocky Flats

We the undersigned commit to using these "Principles for Effective Dialogue and Communication at Rocky Flats" in all interactions at Rocky Flats. Furthermore, all staff involved with Rocky Flats issues at the Colorado Department of Public Health and Environment, Environmental Protection Agency, and Rocky Flats Environmental Technology Site should use these Principles in their interactions and decision-making processes, both formal and informal.

1. It is recognized that all three Parties have distinct roles and independent decision-making responsibilities that they must consider throughout both the formal and informal aspects of decision-making of Rocky Flats issues.

2. At all phases of interaction and decision making, and especially at the early phase of work planning among the lowest working levels possible, staff should engage in interagency dialogue that is aimed at:

sharing all relevant information;

being honest about their own underlying needs and constraints by clarifying the rationale for such needs and limitations through open communication;

striving to understand the views and rationales expressed by other Parties;

being reasonable, flexible and creative; and

solving real problems and achieving environmental results.

3. The goal of interagency dialogue is to achieve consensus on identifying problems and making decisions related to those problems. At the very least, consensus solutions are those that each party is able to live with. At their best, consensus solutions are "win/win" outcomes where truly creative solutions can be found to the complex problems that must be addressed at Rocky Flats.

4. It is understood that the use of a dialogue process is rooted in a shared vision for the site, and shared goals and objectives for achieving the vision. The shared vision, goals and objectives must be arrived at in a consensus process, clearly communicated, and frequently referred to.

5. It is recognized that there are legitimate differences in the underlying needs and interests of the Parties and consensus on specific actions may not always be possible. However, the inability to achieve consensus should not be considered a failure of the dialogue process. Rather, the dialogue process should be considered a failure if there is a lack of clarity and understanding about why each party is taking the position they are taking.

6. The dialogue process above is a philosophy that should apply to all interactions at Rocky Flats. However, all Parties recognize that informal, consensus-oriented dialogue about specific issues cannot continue indefinitely. Such dialogue should continue until consensus is achieved in a reasonable period of time or until all participating Parties believe they have a complete understanding of their respective views and the reasons why they disagree. In those instances where consensus cannot be achieved, the Parties recognize that formal decision-making processes will be used to reconcile differences. The underlying approach described here should not end at this point, but be carried forward into the formal decision-making process.