

**From:** [Jeanne Green](#)  
**To:** [Roberts, Kathryn, NMENV](#)  
**Subject:** 2016 consent order proposal  
**Date:** Tuesday, May 31, 2016 11:13:22 PM

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May 31, 2016

Ms. Kathryn Roberts, Director  
Resource Protection Division  
New Mexico Environment Department  
Post Office Box 5469  
Santa Fe, New Mexico 87502-5469

Public Comment about the Proposed 2016 LANL Consent Order

Dear Kathryn Roberts,

The mission of NMED is "to protect and restore the environment, and to foster a healthy and prosperous NM for present and future generations". As you know NMED has a responsibility "to resolve environmental issues that have or could have a direct impact on the health of our states residents." (from NMED's website: Mission)

Meanwhile, a gargantuan amount (tons) of toxic and radioactive waste sits in unlined trenches and pits at LANL seeping into the soil and the groundwater below. As you know, according to LANL, there is also hexavalent chromium contamination in the regional aquifer, a plume approaching San Ildefonso Pueblo. Cancer rates at the Pueblo and beyond are phenomenal. I have spoken to natives who have lost multiple members of their families to various cancers all of which are caused by exposure to such toxins.

However the modus operandi at the lab is to pump up production and research rather than clean up the enormous toxic mess that they have made which is killing current NM residents and making them ill as well as dooming future NM generations.

Please stick to your mission and protect residents. Bechtel, et.al., is notorious for making huge profits and leaving the scene of destruction and desolation for the public to deal with and pay for, not only with public money but also with public health. Their priority is profit, not cleanup. The LANL 2016 budget assigns only 8.4% to cleanup and their obvious goal is for "cap & cover" instead of clean up, leaving the radionuclides (some polluting for 250,000 years) and extreme toxins in the ground and flowing into our water systems, as they currently do.

I urge the New Mexico Environment Department (NMED) to withdraw the proposed 2016 Compliance Order on Consent, or Consent Order, for Los Alamos National Laboratory (LANL), which was released for public comment on March 30, 2016. It

creates serious problems to ensuring cleanup: it limits public participation opportunities; it reduces enforceability by the Environment Department; it puts the Department of Energy (DOE) in the role of regulator; and it does not have a final compliance/completion date. The proposed 2016 Consent Order represents a giant step backwards to achieving genuine cleanup at LANL.

The Environment Department must retain the existing Consent Order that went into effect on March 1, 2005, with a final deadline of December 6, 2015. Section XII of the 2005 Consent Order established dozens of mandatory deadlines for the completion of corrective action cleanup tasks, including completion of investigations at individual sites, installation of groundwater monitoring wells, submittal of groundwater monitoring reports, evaluation of remedial alternatives for individual sites, and completion of final cleanup remedies. These deadlines are enforceable under Section III.G of the 2005 Consent Order.

I urge the Environment Department to conserve taxpayer resources, withdraw the proposed 2016 Consent Order, and modify the 2005 Consent Order with an update of the Section XII cleanup schedules and a realistic final compliance/completion date.

I formally request that NMED hold a public hearing on the revised Section XII cleanup schedules and new final compliance/completion date as required by the 2005 Consent Order, the New Mexico Hazardous Waste Act (NMSA 1978, §§ 74-4-1 to 14) and the federal Resource Conservation and Recovery Act (RCRA) (40 CFR §270.42, Appendix I.A.5.b.). In the alternative, I request a public hearing on a proposed 2016 Consent Order.

There is no mechanism in the proposed 2016 Consent Order to increase, or to even maintain, a stable annual cleanup budget. This is a travesty.

The following general comments support my position that NMED should withdraw the proposed 2016 Consent Order and revise the 2005 Consent Order to update the Section XII cleanup schedules and provide a realistic final compliance/completion date.  
**NMED Must Add Los Alamos National Security, LLC (LANS), the Management Contractor at LANL, as a Party**

The proposed 2016 draft Consent Order omits naming the management contractor at LANL, the Los Alamos National Security, LLC (LANS), a limited liability corporation, as a Party to the Order.

**NMED, DOE and LANS Propose to Eliminate the Public's Due Process Rights in the proposed 2016 Consent Order**

The 2005 Consent Order explicitly protects procedural due process rights available to the public under the hazardous waste laws. The proposed 2016 Consent Order explicitly removes these protections.

**NMED Must Provide the Public with the Opportunity to Comment on All Drafts of the proposed 2016 Consent Order**

**The Environment Department Must Respond in Writing to All Public Comments**

**All Documents Must Be Posted to LANL's Electronic Public Reading Room**

## **NMED Must Update the Public about the Current State of Cleanup Activities under the 2005 Consent Order**

NMED must promptly provide the public with a concise document about the current status of every site listed in the 2005 Consent Order, including a scheduled completion date or verification that the cleanup work has been completed.

All documents submitted by DOE and LANS, or their predecessors, under the 2005 Consent Order, along with NMED's response, must be incorporated by reference into a proposed 2016 Consent Order.

## **All Cleanup Work Must Have Enforceable Deadlines; The Cleanup Schedule Must Drive Funding, Not as Proposed - Funding Does Not Drive Cleanup**

The proposed 2016 Consent Order eliminates all the deadlines for completing cleanup as required by the 2005 Consent Order. It replaces the deadlines with an open-ended and vague scheduling process, with limited enforcement opportunities.

## **The Consent Order Cannot Be Open-Ended**

### **NMED Must Not Give DOE and LANS a "Get Out of Jail Free" Card - Existing Violations Must Not Be Waived**

The Environment Department is abdicating its responsibility to protect human health and the environment as required by the federal RCRA and the New Mexico Hazardous Waste Act.

NMED must not surrender its regulatory and enforcement powers.

## **New Mexico Attorney General Approval Must Be Obtained**

### **Cleanup Levels Must Remain Strict**

Section IX *Cleanup Objectives and Cleanup Levels* of the proposed 2016 Consent Order would allow DOE to "develop site specific ecological cleanup levels" to mitigate unacceptable ecological risk due to release of site-related contaminants.

There is no mention of NMED's role in this process. DOE and LANS would be allowed to demonstrate to NMED that any particular "cleanup objective is impracticable."

The unacceptable criteria for DOE and LANS to determine whether a cleanup is "impracticable" include technical difficulty, the cost of the project, hazards to workers or to the public, and any other basis that may support a finding of impracticability.

If NMED approves the impracticability request, DOE and LANS may then propose alternative cleanup methods using site-specific risk assessments. All of the decision-making could take place behind closed doors, as there are no public participation requirements in this section.

In closing, the New Mexico Environment Department's proposed 2016 Consent Order

allows the federal government to leave Northern New Mexico contaminated forever if DOE believes that cleanup is too difficult or costly— a sorry situation indeed for a nuclear weapons facility that receives over \$2 billion in taxpayer money a year.

For all the reasons stated above, I urge the New Mexico Environment Department to withdraw the proposed 2016 Consent Order.

The New Mexico Environment Department should implement revisions to the 2005 Consent Order in Section XII for cleanup schedules and include a final compliance/completion date. The schedules and final date should be realistic, aggressive and enforceable.

The State of New Mexico must remain in the driver's seat. NMED should not abdicate its power to DOE and LANS at LANL. Cleanup of LANL is essential to protect human health and the environment. Cleanup would permanently protect the environment and our precious water will be applied.

### **WE Deserve Better**

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The State of New Mexico must remain in the driver's seat. NMED should not abdicate its power to DOE and LANS at LANL. Cleanup of LANL is essential to protect human health and the environment. Cleanup would permanently protect the environment and our precious water resources while creating hundreds of high-paying cleanup jobs. It would be a real win-win for New Mexicans.

Thank you for your careful consideration of my comments

Sincerely,  
Jeanne Green, Taos