

From: marigayl@netzero.net
To: [Roberts, Kathryn, NMENV](#)
Subject: Public comment on proposed 2016 LANL Consent Order
Date: Tuesday, May 31, 2016 10:06:17 AM

May 31, 2016

Ms. Kathryn Roberts, Director
Resource Protection Division
New Mexico Environment Department
Post Office Box 5469
Santa Fe, New Mexico 87502-5469
Via email to: kathryn.roberts@state.nm.us

Re: Public Comments about the Proposed 2016 LANL Consent Order

Dear Ms. Roberts:

The New Mexico Environment Department (NMED) must withdraw the proposed Consent Order for Los Alamos National Laboratory (LANL), which creates serious obstacles to cleanup: it limits public participation, limits enforcement powers of the state Environment Department, and makes the Department of Energy (DOE) its own regulator—the fox minding the hen house. And it fails to stipulate a final compliance/completion date. The proposed 2016 Consent Order actually serves as an obstacle to achieving vitally needed cleanup at LANL.

Instead, 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. The existing Consent Order established mandatory deadlines for vital cleanup tasks, including completing reports of individual sites, installing groundwater monitoring wells, submitting groundwater monitoring reports, evaluating remedial alternatives, and completing final cleanup remedies. Section III.G of the 2005 Consent Order provides enforceable deadlines.

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 a public hearing on a proposed 2016 Consent Order. The proposed 2016 Consent Order fails to increase the LANL cleanup budget. The new cleanup contract is set up to fail from the beginning under either the 2005 Consent Order or 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. 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.

Further, 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. It must do so. 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.

Thus the Parties have inappropriately agreed to remove the due process rights, procedures and other protections provided to the public under the Resource Conservation and Recovery Act (RCRA), the New Mexico Hazardous Waste Act and the 2005 Consent Order. This provision must be stripped from the proposed 2016 Consent Order.

NMED should follow the established precedent and provide for public review and comment for all future drafts of the proposed 2016 draft Consent Order.

I demand that the Environment Department, DOE and LANS make all communications between them, including all documents, submittals, approvals, notices of deficiencies and denials submitted as required by the 2005 Consent Order or a proposed 2016 Consent Order. These must be made readily and electronically available to the public through LANL's Electronic Public Reading Room. DOE and LANS must notify all interested individuals by e-mail of all submittals through the Electronic Public Reading Room.

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.

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 opportunities for enforcement. The "campaign" approach of the proposed 2016 Consent Order provides limited enforceable cleanup deadlines, thereby ensuring an open-ended final compliance/completion date. It provides no required public hearing and therefore no opportunity to comment on the proposed deadlines.

Any Consent Order must ensure that all scheduled cleanup work has mandatory completion dates, enforceable by NMED. But the proposed 2016 Consent Order would indefinitely extend the final compliance date for completing corrective cleanup action at LANL, without public hearings. This is unacceptable.

As required by state and federal regulations, NMED must provide a 60-day public review and comment period, in addition to an opportunity for a public hearing, about schedule changes to Section XII in the 2005 Consent Order and the new final compliance date.

NMED must not give DOE and LANS a "Get Out of Jail Free" card by waiving existing violations, as per Section II.A of the proposed 2016 Consent Order: "This Consent Order supersedes the 2005 [Consent] Order and settles any outstanding alleged violations under the 2005 Consent Order." This slap-dash irresponsibility endangers all downwind and down-river New Mexicans! This provision could grant DOE and LANS immunity from violations of the 2005 Consent Order.

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. The 2005 Consent Order was signed by the Attorney General of New Mexico for purposes of the Section III Covenant Not to Sue and the Reservation of Rights provisions. The proposed 2016 Consent Order provides the State of New Mexico with a covenant not to sue DOE on behalf of the State of New Mexico. But there is no signature line for the New Mexico Attorney General in the proposed 2016 Consent Order. The Environment Department must ensure that the New Mexico Attorney General is consulted, and his approval obtained, before any Consent Order is

finalized.

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

NMED must specify the applicable cleanup levels that will be used and when and where they will be applied. 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. Please keep in mind that our tax dollars fund this utterly useless nuclear weapons facility to the tune of over \$2 billion a year. This dire threat to the health of New Mexicans is financed out of our own pockets, as is the budget of NMED, whose duty is to serve New Mexico citizens, not the convenience of the corrupt corporations running LANL.

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 for cleanup schedules that are 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 our precious water resources and would create hundreds of high-paying cleanup jobs. Please, for the sake of our health, cancel the 2016 Consent Order. You are here to serve the needs of New Mexicans, not the greed of careless corporations.

Thank you for your consideration of my comments,

Sincerely,
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