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SECRETARY

**DERRITH WATCHMAN-MOORE**  
DEPUTY SECRETARY

**PUBLIC NOTICE NO. 04-14**

**NOTICE OF PROPOSED ORDER ON CONSENT ISSUED TO THE U.S. DEPARTMENT OF ENERGY AND THE UNIVERSITY OF CALIFORNIA FOR LOS ALAMOS NATIONAL LABORATORY, LOS ALAMOS, NEW MEXICO  
EPA ID NO. NM0890010515  
SEPTEMBER 1, 2004**

The New Mexico Environment Department (NMED) is today releasing for public review and comment a proposed Order on Consent that will require the owner and operators of Los Alamos National Laboratory (LANL) to conduct a comprehensive investigation and cleanup of environmental contamination at the LANL facility.

LANL is a research facility under the administration of the United States Department of Energy (DOE) and is operated by the Regents of the University of California (UC). LANL is the site of research and development of the first atomic bomb. It has been in operation since the early 1940's. Throughout its history, LANL has conducted experimental research on the production of nuclear weapons and explosive materials, among other things. As a result of the research, LANL has generated and disposed of a variety of hazardous, radioactive and solid wastes on-site. Disposal activities at LANL started in the early 1940's and some continue to the present day. Hazardous and solid wastes that have been handled and disposed of at LANL include chlorinated and non-chlorinated solvents, high explosives, metals, polychlorinated biphenyls (PCB's), pesticides, perchlorate, nitrates and radionuclides.

LANL covers approximately 40 square miles of federal land located on the Pajarito Plateau in Los Alamos County in north-central New Mexico, approximately 60 miles north-northeast of Albuquerque and 25 miles northwest of Santa Fe. LANL is surrounded by the Pueblo of San Ildefonso, Los Alamos County, Santa Fe County, Bandelier National Monument, Santa Fe National Forest, and Bureau of Land Management lands. The Rio Grande and the tribal lands of the Pueblo of San Ildefonso border LANL down stream to the east.

The federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §§ 6901 to 6992(k), provides for the regulation of hazardous waste. In section 6001(a) of RCRA, 42 U.S.C. § 6961(a), Congress waived the sovereign immunity of the United States for actions brought under state hazardous and solid waste laws as well as under RCRA. The New Mexico Hazardous Waste Act (HWA), NMSA 1978, §§ 74-4-1 to 74-4-14, the State analogue to RCRA, also regulates hazardous waste. Pursuant to the HWA, the State has promulgated the Hazardous Waste Management Regulations (HWMR), 20.4.1 NMAC to implement the HWA. On April 16, 1985, pursuant to Section 3006 of RCRA, 42 U.S.C § 6926, the EPA delegated to the NMED the authority to administer and enforce the State hazardous waste program under the HWA and the HWMR in lieu of the federal program administered and enforced by EPA under RCRA.

The HWA and the HWMR require corrective action at sites, such as LANL, where hazardous waste or hazardous constituents have been released into the environment. The DOE and UC must comply with the HWA and the HWMR.

On May 2, 2002, NMED released a Determination of an Imminent and Substantial Endangerment to Health and the Environment concerning Los Alamos National Laboratories (the Determination). NMED also released for public comment a draft order to compel investigation and cleanup of environmental contamination at LANL pursuant to the HWA, NMSA 1978 §§ 74-4-10.1 and 74-4-13. The draft order contained investigation and cleanup requirements and a schedule for implementation of corrective action at LANL. The public was invited to comment on the draft order during an initial sixty-day comment period that was later extended by an additional thirty days. The ninety-day comment period ended on July 31, 2002. Four public meetings were also held by NMED in 2002, to provide information to the public at various locations. NMED received written comments from various parties, including the DOE and UC, during the public comment period and a response was prepared for all the written comments received. NMED issued the final Order under Sections 10.1 and 13 that included a revised Imminent and Substantial Endangerment finding on November 26, 2002 after considering all the comments received. The United States on behalf of DOE, and UC, then sued NMED in federal and State court, challenging the Order. Subsequently, NMED entered into settlement negotiations with DOE and UC. As a result of these negotiations, the parties have agreed on the proposed Order on Consent which NMED is releasing today for public comment. The proposed Order on Consent is based largely on the original November 26, 2002 Order.

**Proposed Action:** NMED is proposing to enter into an Order on Consent with the DOE and UC pursuant to section 74-4-10 of the HWA and section 74-9-36(D) of the New Mexico Solid Waste Act. The Order on Consent will require DOE and the UC (or its successor) to conduct a laboratory-wide investigation and cleanup of contamination at LANL pursuant to schedules set forth in the Order. Once final, the Order on Consent will replace most of the corrective action requirements currently included in “Module VIII” of the LANL RCRA Hazardous Waste Facility Permit. The proposed Order on Consent is being released today and the public is invited to comment on it during thirty-day comment period.

**Availability of the Proposed Order on Consent and Other Documents:** The Administrative Record for this action includes the proposed Order on Consent, the November 26, 2002 final Order, the Fact Sheet, this Public Notice, investigation and monitoring data, investigation reports, related correspondence and other documents. NMED has prepared an index to the Administrative Record to facilitate access to the Administrative Record by the public. The documents that comprise the Administrative Record may be reviewed at:

NMED – Hazardous Waste Bureau  
2905 Rodeo Park Drive East, Building. 1  
Santa Fe, New Mexico 87505-6303  
(505) 428-2500  
*Monday – Friday from 8:00 a.m. to 5:00 p.m.*

LANL Community Relations Reading Room  
1619 Central Avenue  
Los Alamos, New Mexico 87545  
(505) 665-4400  
*Monday - Friday from 8:00 a.m. to 5:00 p.m.*

The text of the proposed Order on Consent, the Fact Sheet and this Public Notice are also available on the New Mexico Environment Department (NMED) Web Page at: <http://www.nmenv.state.nm.us/HWB/lanlperm.html> under Order on Consent. To obtain a copy of the Administrative Record or a portion thereof, please contact the NMED Hazardous Waste Bureau at the address or phone given above. NMED will provide copies of the Administrative Record, or portions thereof, at a charge of \$0.25 per page.

Any person who wishes to comment on this proposed Consent Order should submit written or electronic mail (e-mail) comment(s), along with the commentor's name and address, to Bureau Chief, Hazardous Waste Bureau at the above mentioned address.

**Public Participation:** The thirty (30)-day public comment period on the proposed Order on Consent begins **Wednesday, September 1, 2004**, and ends **Friday, October 1, 2004**. To be considered and included in the Administrative Record, written and electronic mail (e-mail) comments must be received no later than **October 1, 2004, at 5:00 p.m.** at the following addresses.

James P. Bearzi, Chief  
Hazardous Waste Bureau  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505-6303  
Phone: (505) 428-2500

Or, e-mail: [hazardous\\_waste\\_comment@nmenv.state.nm.us](mailto:hazardous_waste_comment@nmenv.state.nm.us)  
Ref: LANL Order on Consent

All significant written comments received during this comment period will become part of the Administrative Record.

In addition, a public informational meeting will be held in Pojoaque, New Mexico, from **7:00 p.m. to 9:00 p.m.**, at the **Cities of Gold Hotel** at 10-A Cities of Gold Road, on **Wednesday, September 8, 2004**.

The meeting will provide information as to the general content and organization of the proposed Order on Consent. The public will be afforded the opportunity to ask questions about the proposed Order on Consent, and will be able to submit written comments at that time. For additional information, please contact the Hazardous Waste Bureau at (505) 428-2500.

**Arrangement for Persons with Disabilities:** Any person with a disability requiring assistance or auxiliary aid to participate in this process should contact Judy Bentley at the following address: New Mexico Environment Department, Room N-4030, P.O. Box 26110, 1190 St. Francis Drive, Santa Fe, New Mexico 87502-6110, (505) 827-2844. TDD or TDY users please access Judy Bentley's number via the New Mexico Relay Network. Albuquerque users may access Ms. Bentley's number at (505) 275-7333.