



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

October 17, 2022

National Nuclear Security Administration
LANL SWEIS Comments
3747 W Jemez Road
Los Alamos, NM 87544

Submitted electronically to: LANLSWEIS@nnsa.doe.gov

RE: NNSA Notice of intent to Prepare a Site-Wide Environmental Impact Statement for Continued Operation of the Los Alamos National Laboratory

Dear NEPA Compliance Officer,

On behalf of the New Mexico Environment Department (NMED), attached please find our comments on the Federal Register Notice of August 19, 2022, regarding the request for review and comment on the Notice of Intent to Prepare a Site-Wide Environmental Impact Statement (SWEIS) for Continued Operation of the Los Alamos National Laboratory (LANL).

All activities at LANL are of importance to the residents of New Mexico, and strong intergovernmental coordination, as required by the National Environmental Policy Act (NEPA), is essential to ensure continued progress in addressing potential impacts to human health and the environment from ongoing and proposed activities at LANL. Strong coordination and rigorous public process are also imperative in addressing LANL's legacy contamination in New Mexico and on tribal lands, as clean-up delayed is clean-up denied.

Furthermore, in the recent past, New Mexico residents and both the city and county of Santa Fe, have requested a new SWEIS. NMED recognizes the significance of NNSA's decision to begin a new SWEIS after electing not to do so in previous years and appreciates the opportunity for a robust process for seeking input and involvement from State, Tribal and community partners.

NMED offers important comments on the Notice of Intent in the attachment for you to evaluate as the NEPA process continues. Thank you for providing the opportunity to comment and for granting a comment period extension.

Sincerely,

A handwritten signature in blue ink that reads "James C. Kenney".

James C. Kenney
Cabinet Secretary

Attachment (1)

Cc: Tom Nagle, Special Assistant, Office of Governor Michelle Lujan Grisham
Rebecca Roose, Deputy Cabinet Secretary of Administration, NMED
Chris Catechis, Acting Director, Resource Protection Division, NMED
John Rhoderick, Acting Director, Water Protection Division, NMED

Attachment

Introduction

The National Nuclear Security Administration (NNSA) has requested review and comment on the Notice of Intent to Prepare a Site-Wide Environmental Impact Statement (SWEIS) for Continued Operation of the Los Alamos National Laboratory. As part of the scoping process, NNSA seeks input on a preliminary set of three alternatives and any additional alternatives that should be included in the SWEIS. LANL's current and historical operations include nuclear weapons design and testing; high explosives research, development, fabrication, and testing; chemical and materials science research; electrical research and development; laser design and development; and photographic processing. These operations generate numerous waste streams, including hazardous and radiological wastes.

Comments

1. Alternatives to Include in the SWEIS

- a. **Given the serious past and continuing impacts of LANL's operations on groundwater, soils, and surface water, and the increasing threat of wildfire due to climate change that could cause severe environmental and human health impacts, we urge the NNSA to include a Reduced Operations Alternative in the SWEIS.** NMED recommends the Reduced Operations Alternative reduce those operations such as plutonium pit production and related operations that produce toxic and radioactive waste and/or have the potential for releases of toxic and radioactive substances to the environment, all while increasing the amount of money and staff time spent on cleaning up legacy waste and environmental contamination. Among other environmental impacts considered under this alternative, NNSA should fully explore the impacts of reduced production operations on waste management and disposal, particularly considering that the Waste Isolation Pilot Plant in New Mexico is still the nation's only repository for transuranic waste.

Furthermore, the Reduced Operations Alternative should not contemplate reduced cleanup operations, as New Mexicans have already lived with the legacy contamination from LANL for far too long.

- b. **NMED urges the federal Department of Energy (DOE) and the NNSA to focus on expanded remedial activities under the Expanded Operations Alternative, including activities directly related to compliance with the New Mexico Water Quality Act, the 2016 Consent Order and any successor Order.** In February 2021, NMED filed a complaint against DOE in district court to terminate the 2016 Consent Order and initiate court-supervised negotiations to establish enforceable terms that accelerate cleanup of legacy contamination. NNSA's evaluation of environmental impacts as part of the SWEIS must account for DOE's past cleanup commitments and obligations and meaningfully consider expanded remedial activities and definite timelines, such as those that may be encompassed by a new compliance order on consent as the litigation on the 2016 Consent Order is resolved.

2. Issues or Analyses the SWEIS Should Include

- a. **At a minimum, the DOE and NNSA should provide a detailed, quantitative accounting of federal funds for environmental management activities in response to [the Office of Management and Budget's July 20, 2021, interim guidance](#), which states that the DOE**

LANL site is subject to the interim guidance for the Justice40 initiative (see Appendix A and B of the guidance). President Biden directed federal agencies to meet the goals of Justice40 so that 40% of the overall benefits of federal investments flow to disadvantaged communities. Specifically, NMED requests that the DOE and NNSA address President Biden's Justice40 initiative as it relates to remediation and reduction of legacy pollution at LANL in the SWEIS. NMED also requests DOE and NNSA specifically address how contractor performance and oversight has changed in light of Justice40 requirements (i.e., contract terms, conditions, performance measures, incentives, etc.), as well as build-upon focused community engagement DOE and NNSA have conducted as they implement Justice40.

- b. NMED requests the DOE Office of Environmental Management (EM) quantify the remaining legacy waste at LANL and express and set aside the volume of WIPP space necessary to accommodate LANL wastes.** Currently, DOE and NNSA rely on the Waste Isolation Pilot Plant (WIPP) for waste streams generated from DOE EM and NNSA activities. However, the WIPP is 41% full, which means that DOE and NNSA will need to plan, design and build another geological repository elsewhere in the United States to continue to support its domestic operations. While the DOE initiates that effort, the remaining 59% of the WIPP capacity will continue to shrink. DOE should state in the SWEIS the volume of legacy waste at LANL and corresponding percentage of space held at WIPP for this waste. This is especially important given the Trump Administration entered into settlement agreements with other states that prioritize shipments to WIPP and slowed down clean-up at LANL and associated shipments to WIPP.
- c. NMED recommends that the SWEIS heavily weigh the risk of public drinking water contamination due to legacy contamination, accidents, flooding, and wildfire.** Several public drinking water sources are downstream of and impacted by the LANL site, including the Los Alamos Municipal Water System and the Buckman Surface Water Intake for the City and County of Santa Fe. The Buckman diversion stops taking in surface water during certain rain and runoff events due to the radioactive and/or toxic substances released from LANL that continue to contaminate the Rio Grande. While significantly further away, the Albuquerque-Bernalillo County Water Utility Authority surface water intake is also located downstream of the LANL site.
- d. Arroyos and watercourses adjacent to LANL are Waters of the United States subject to the federal Clean Water Act (CWA) and are also Waters of the State protected under NMED regulations.** Under both the Modernizing Current Operations and Expanded Operations alternatives, the SWEIS should address CWA permitting and compliance requirements and analyze the need for Best Management Practices to ensure protection of surface waters. Operations at LANL should minimize disturbance and earthwork in legacy release sites and Solid Waste Management Unit areas.
- e. The SWEIS should consider sites at LANL where petroleum storage tank releases (leaks or spills) have been confirmed, especially the two active sites.** As a federal facility, the DOE will need to continue cleanup activities as required under New Mexico's Petroleum Storage Tank regulations. There are also 16 confirmed release sites with *No Further Action* status. There may be residual petroleum hydrocarbon contamination that may impact what work NNSA can contemplate at these 16 sites under various SWEIS alternatives.