



MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

December 16, 2022

Joyce Connery, Chair
Defense Nuclear Facilities Safety Board
625 Indiana Ave NW Suite 700
Washington, DC 20004

Submitted electronically to: hearing@dnfsb.gov

RE: Defense Nuclear Facilities Safety Board Hearing on Los Alamos National Laboratory

Dear Chairwoman Connery,

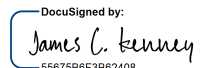
On behalf of the New Mexico Environment Department (NMED), attached please find our comments for the November 16, 2022, public hearing on regarding legacy cleanup activities, nuclear safety, and increased production activities at Los Alamos National Laboratory (LANL).

All activities at LANL are of importance to the residents of New Mexico, and strong intergovernmental coordination 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, nuclear safety, and the possibility of increased plutonium pit production in New Mexico.

In the recent past, New Mexico residents and both the City and County of Santa Fe, have requested a new Site Wide Environmental Impact Statement (SWEIS) for LANL. This public hearing by the Defense Nuclear Facilities Safety Board (DNFSB) is another opportunity to add input and involvement from State, Tribal and community partners. Our comments are offered with the intent of informing the DNFSB of concerns and issues at LANL, so that these may be addressed in accordance with the Board's mission "to provide independent analysis, advice, and recommendations to the Secretary of Energy to adequately protect public health and safety at defense nuclear facilities."

NMED offers important comments in the attachment for the DNFSB to evaluate for the public hearing. Thank you for providing the opportunity to comment.

Sincerely,

DocuSigned by:

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James C. Kenney
Cabinet Secretary

Attachments (1)

Cc: Courtney Kerster, Chief of Staff, Office of Governor Michelle Lujan Grisham
Rebecca Roose, Deputy Cabinet Secretary of Administration, NMED
Rick Shean, Acting Director, Resource Protection Division, NMED
John Rhoderick, Acting Director, Water Protection Division, NMED

Attachment

1. Delays in legacy waste clean-up at Los Alamos National Laboratory (LANL) are a threat to the public health and safety of New Mexico residents. Further, delays in legacy waste clean-up at LANL and the lack of transparency related to the prioritization of shipments to the Waste Isolation Pilot Plant (WIPP) threaten to turn New Mexico into the nation's waste sacrifice zone.

a. NMED has filed a civil complaint in First Judicial District Court against the U.S. Department of Energy (DOE) for failing to make progress on clean-up of contamination as required by the 2016 Compliance Order on Consent (2016 Consent Order) at LANL. NMED found the DOE Los Alamos Field Office's 2021 Plan was inadequate due to a lack of substantive and appropriate clean-up targets for coming years.

b. The DOE Office of Environmental Management (EM) has entered into legally binding settlement agreements with states to prioritize waste shipments to WIPP at the expense of shipments from other states, including New Mexico. This is problematic for both the clean-up of legacy waste at LANL and new waste from pit production at LANL. The practice of DOE EM solely managing waste shipments to WIPP from around the U.S. without first discussing with New Mexico stakeholders – including NMED as its regulator – is deeply problematic. Equally problematic is that DOE EM has sought to expand the scope of waste streams sent to WIPP.

c. DOE revised its interpretation of the definition of "high level waste" and developed a "dilute and dispose" program to ship surplus plutonium from South Carolina to WIPP in a potential manipulation of NMED's waste acceptance criteria as found in the state operating permit. In another example, DOE EM expressed interest in sending Americium-241 to WIPP, which is currently not allowed under the federal Land Withdrawal Act. Finally, DOE will soon begin operating a nuclear waste treatment plant in Idaho, reclassifying a high-level liquid waste stream as a solid waste, which DOE officials have noted could be to simply meet WIPP permit requirements.

2. NMED requests that DOE 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 the National Nuclear Safety Administration (NNSA) rely on WIPP for waste streams generated from DOE EM and NNSA activities. However, WIPP is 41% full, which means 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 DOE initiates that effort, the remaining 59% of WIPP capacity will continue to shrink. DOE should state in the Sitewide Environmental Impact Statement (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 prioritized shipments to WIPP and slowed down clean-up at LANL and associated shipments to WIPP. NMED believes WIPP should prioritize emplacement of waste from LANL. Any new proposed or increased waste streams from other states should not be considered until a clear path forward has been identified and adequately funded for waste at LANL, with a particular emphasis on legacy waste clean-up.

a. The legacy waste from LANL already has resulted in the release of hazardous waste and constituents into the environment and has contaminated groundwater.

- b. LANL historically deposited hazardous and radioactive waste in LANL site septic systems, pits, surface impoundments, trenches, shafts, landfills, and waste piles. LANL also discharged industrial wastewater and other waste into many of the canyon stream systems at the LANL site.
- c. Many other cleanup efforts at LANL fell short or never began in the first place. Due to many years of minimal progress, cleanup of legacy waste is far from complete. DOE admitted that completing the cleanup of legacy waste by a target date of 2036 is unrealistic.
- d. The residents of Los Alamos County and the downstream residents, including the Pueblo de San Ildefonso, face health and environmental harm from the continued storage of legacy waste at the LANL site.
- e. It is imperative that LANL remove all remaining waste disposed at the LANL site.