New Mexico Environment Department
Public Comments Received on
Draft Compliance Order on Consent
For Los Alamos National Laboratory
June 2016

Table 1: List of Public Commenters

	Commenter ID	Date of Letter, E-mail or Comment	Commenter (and Association, if Applicable)
1	RCLC	April 26, 2016 (Letter)	Regional Coalition of LANL Communities
2	HR	May 10, 2016 (Letter)	Mr. Henry P. Roybal - Santa Fe County Commissioner, District 1
3	JZ	May 12, 2016 (Email)	Mr. John Zemblidge
4	SH	May 12, 2016 (Email)	Ms. Stephanie Hiller
5	A y A	May 13, 2016 (Email)	Ms. Margaret M McChesney
6	EPA	May 13, 2016 (Letter)	Environmental Protection Agency, Region 6
7	SN3	May 13, 2016 (Email)	Mr. Frazer Lockhart, Assistant Vice President, Stoller Newport News Nuclear
8	Rio Arriba	May 13, 2016 (Letter)	Mr. Barney Trujillo - Rio Arriba County Commissioner District 1
9	PR	May 14, 2016 (Email)	Ms. Pamela Richard
10	JA	May 14, 2016 (Email)	Mr. John Ahlquist
11	RJ	May 15, 2016 (Email)	Mr. Richard Johnson
12	KW	May 15, 2016 (Email)	Ms. Karen Weber
13	Nuke Watch 1	May 16, 2016 (Email)	Mr. Scott Kovac and Mr. Jay Coghlan, Nuclear Watch New Mexico
14	KD	May 16, 2016 (Email)	Mr. Kevin Draper
15	AL	May 18, 2016 (Letter)	Honorable Mayor Alice Lucero
16	KL	May 19, 2016 (Email)	Ms. Kathryn Lynnes
17	AG	May 26, 2016 (Email)	Ms. Angelica Gurule
18	TF	May 27, 2016 (Email)	Mr. Thomas French
19	LA Co.	May 27, 2016 (Letter)	Mr. Harry Burgess – Manager, Los Alamos County
20	ST	May 28, 2016 (Email)	Ms. Susan Trujillo
21	CT	May 29, 2016 (Email)	Representative Carl Trujillo, District 46

22	KF	May 30, 2016 (Email)	Ms. Kristina G. Fisher
23	WM	May 30, 2016 (Email)	Mr. William Moats
24	KS	May 31, 2016 (Email)	Ms. Kathy WanPovi Sanchez, Tewa Women United
25	MH	May 31. 2016 (Email)	Ms. Marilyn Hoff
26	DH	May 31, 2016 (Email)	Mr. Don Hyde
27	EV	May 31, 2016 (Email)	Ms. Eleanore Voutselas
28	MM	May 31, 2016 (Email)	Dr. Maureen Merritt DO, CMO, LCDR (ret.) USPHS
29	SGR	May 31, 2016 (Letter)	Representative Stephanie Garcia-Richard, District 43
30	San I	May 31, 2016 (Letter)	Honorable Governor James R. Mountain – Pueblo de San Ildefonso
31	CH2M	May 31, 2016 (Letter)	Ms. Shannon Farrell - Environment and Nuclear Business Group, CH2M
32	CV	May 31, 2016 (Email)	Mr. Ben Shelton, Political Director, Conservation Voters New Mexico
33	CCNS	May 31, 2016 (Email)	Ms. Joni Arends Concerned Citizens for Nuclear Safety and Mr. Robert Gilkeson, Independent Registered Geologist
34	DR	May 31, 2016 (Email)	Ms. Deborah Reade
35	BM	May 31, 2016 (Email)	Ms. Basia Miller
36	Nuke Watch 2	May 31, 2016 (Email)	Mr. Scott Kovac and Mr. Jay Coghlan, Nuclear Watch New Mexico
37	Santa Clara	May 31, 2016 (Email & Letter)	Honorable Governor J. Michael Chavarria, Santa Clara Pueblo

Table 2: List of Public & Stakeholder Meetings

1	Northern New Mexico Citizens Advisory Board	Public Meetings – 3/30/16; 5/18/16; Resolutions 2016-1, 2016-2, 2016-03
2	Regional Coalition of LANL Communities	Public Meeting – 4/8/16
3	Environmental Protection Agency, Region 6	Meetings 4/22/16; 4/25/16; 5/2/16
4	Nuclear Watch New Mexico	Meeting 4/8/16
5	Pueblo de San Ildefonso	Meeting 4/26/16
6	Los Alamos County	Meeting 4/28/16
7	NMED Public Meeting	Public Meeting 4/28/16
8	Attorney General's Office	Meeting – 5/4/16
9	Congressional Delegation: Dan Alpert and Maya Hermann (Senator Martin Heinrich's Office), John Black (Senator Tom Udall's Office)	Meeting – 5/13/16
10	The Four Accord Pueblos: Santa Clara Pueblo, Pueblo de San Ildefonso, Cochiti Pueblo and Jemez Pueblo	Meeting – 5/24/16
11	Nuclear Watch New Mexico Public Meeting	Public Meeting – 5/24/16
12	Jemez Pueblo	Meeting – 6/1/16

Table 3: Public Comments Received During the Public Comment Period for the Draft Compliance Order on Consent for Los Alamos National Laboratory

Commenter	Public Comment	Change to Consent Order (March 30th version)?
Key Areas of Enhancement		
1) Campaign Approach – Section VIII		
RCLC	We ask that you stratify cleanup projects into two separate campaigns by consistently dividing them up by characterization and remedy. The example of doing so exists within the Chromium remediation campaign plans listed in Appendix B. The separation of interim measure/ characterization and final remedy into two separate campaigns supports public understanding of when a remedy option is being prepared once the campaign has been officially characterized. Once characterized, our communities can therefore participate in the decision making process on deciding the best option for final remediation. Conversely, grouped into one campaign is the 'RDX IM & Remedy'. We would like NMED to consider dividing this, and other campaigns like it, into two parts with corresponding milestones into two separate campaigns distinguishing characterization/interim measures from the final remedy.	Yes - Appendix B and Appendix C - Change made to Appendices B and C to split the RDX IM and Remedy into separate Campaigns.
RCLC	We are in support of current cleanup milestones listed in Appendix B and future campaigns proposed in Appendix C. Most critically, we want to ensure Chromium plume remediation, RDX cleanup, and TA-21 are among the highest priorities based on risk and community benefit.	No change.
LA County; San I Pueblo	Commenters raised a concern about future changes to the order in which Campaigns are executed. What happens when the Administration changes?	Yes - Section VIII.B.5
Rio Arriba	The new “risk-based” approach of the NMED draft Consent Order for Los Alamos National Laboratory (LANL) means the material that could have the greatest harm to the public gets addressed first. I	No change.

	support that rationale."	
SN3	The Campaign Approach is a powerful feature of this Draft Consent Order which provides for CERCLA-like grouping and consideration of remedies and risks. Excellent.	No change.
SN3	Reaching and documenting agreement in advance for what will qualify as success will greatly facilitate the collaborative approach, and avoid future disputes.	No change.
HR	I also support the new concept of campaigning the cleanup activities into more manageable blocks of work. I believe this will result in greater efficiencies and more rapid completion of the prescribed tasks.	No change.
JA	Appendix B lists milestones and targets for the next few years. It does not show actual remedial action but includes continued characterization and writing of plans. I learned in the cleanup of TA-1 in 1975-6 that it almost impossible to plan and characterize your way to a successful cleanup. The original scope was to spend $1500 to remove a septic tank. We spent $769K and removed 20,000 cubic yards of material. We had clear criteria of what constituted a successful cleanup and a good crew determined to find whatever contamination might be there. It was very much an iterative process. The remediation efforts drove the characterization. It would not have been possible to characterize and plan for everything that we encountered and we would have likely spent more than the remediation cost. I suggest the order take a fresh look at an active iterative process for accomplishing actual remediation.	No change.
JA	The problem has been lack of focus on what is truly important and was driven by NMED and acquiesced to by the DOE. NMED's authority to regulate this remediation was granted by the EPA which has abdicated its oversight responsibility. I saw the same problem at the Rocky Flats Plant in the 1990s where DOE, the Colorado Department of Health and the EPA were at continual loggerheads over the cleanup agreement. I was at the seminal meeting when the Colorado Lt. Governor called a halt to the foolishness and insisted on a collaborative and not combative approach. The cleanup had been predicted to last 30 years and cost $24B. It was completed in less than ten years for $6B. At LANL there was a clear focus for the removal of structures at TA-21 and a major	No change.

	project was successfully completed in a reasonable time. NMED was not involved in this work. If the governor provides clear direction, it is possible that the guiding principles of this draft order will be actually implemented. EPA should be monitoring NMED very carefully.	
Nuke Watch 1, KS	**All future work must have enforceable deadlines** • The proposed draft 2016 Consent Order proposes a "Campaign" approach with enforceable cleanup deadlines limited to the work scheduled only for that year. • I request that all anticipated cleanup projects have scheduled enforceable cleanup deadlines from the beginning of any revised Consent Order.	No change.
Nuke Watch 1, KS	The proposed 2016 consent order would eliminate all the deadlines for completing cleanup under the 2005 Consent Order, and replace them with an open-ended and vague scheduling process, with limited enforcement opportunities. The 2005 Consent Order, in Section XII, established dozens of deadlines for the completion of corrective action 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 remedies. These deadlines are enforceable under section III.G. The proposed 2016 Consent Order would abandon the 2005 Consent Order provisions and replace them with a so-called "Campaign Approach" under Section VIII. Under Section VIII.A.3, it would be up to the DOE, not the regulator at the New Mexico Environment Department, to select the timing and scope of each "campaign." Enforceable deadlines for cleanup tasks would apply no more than one year into the future. Deadlines would be based on "Campaigns" negotiated each year with DOE with no public participation and	No change.

	opportunity to comment on the schedule. To add insult to injury, the annual schedule would be determined by funding at DOE's discretion, rather than the schedule driving the funding, which was the fundamental approach of the 2005 Consent Order. All cleanup projects must mandatory completion dates scheduled from the beginning date of any revised Consent Order, and must be fully enforceable**.**	
KS	To add insult from backward thinking, the annual schedule would be determined by funding at DOE's discretion, rather than the schedule driving the funding, which was the fundamental approach of the 2005 Consent Order. Where is the legal logic of polluters have more rights than people who are most impacted by loss of lives left without faces in no public participation allowed. All cleanup projects must have mandatory completion dates scheduled from the beginning date of any revised Consent Order, and must be fully enforceable. What business management school did DOE/LANL team go to? When did sound ,sane, safe business practices go out the door? Who is really in charge? When the founding fathers of the first atom bombs settled in our sacred lands who was doing damage management? What was the motto? Kill or be killed? Last man standing is in charge? And now allowing to call spaces and places on the game board of how can we get away with murder? Dump stupidity with sound safe mandatory completion dates scheduled from the beginning date of any revised Consent Order, and must be fully enforceable. Whose job is it to monitor the leaving of toxic waste and whose job it is to enforce noncompliance if time is an invisible line in sand? Even my elementary grandson does not say I will clean up my room when you pay me and if and when I feel like it.	No change.
AL	I also believe that the new way in which NMED forces cleanup at LANL, by focusing first on moving dangerous materials, is a very common sense approach and one that is long overdue. Providing rapid protection to the people and the environment has to be the new priority going forward. We know the risks and know we need them cleaned up.	No change.
KL	Strongly support risk-based prioritization approach. This should help	No change.

	eliminate cherry-picking the easy sites to show "progress". I hope that during the transition to the new contract that the institutional memory of folks that really know the sites is used to assess which sites pose the most immediate potential risks either because of existing data or the lack of it.	
TF	The draft order substantially changes the focus of cleanup from work at specific sites to a broad "campaign approach." NMED:DOE FrameworkAgreement for LANL Jan. 2011 and NMED Summary Framework Agreement 01-5-2012. That approach failed when it was used to expedite shipping plutonium-contaminated waste from LANL to the Waste Isolation Pilot Plant (WIPP). One or more of those drums exploded in the WIPP underground causing a more than two-year shutdown. Over 600 potentially exploding drums are disposed of in the WIPP underground.	No change.
KF	Any new consent order should include a detailed, enforceable schedule of genuine cleanup milestones. The proposed "campaign" approach in the draft order is unacceptable. Setting enforceable deadlines year by year does not give the public any assurance that full cleanup will be achieved.	No change.
CV	The draft consent order would eliminate all the deadlines for completing corrective action tasks under the 2005 Consent Order, and replace them with an indefinite and opaque negotiating process. There would be no opportunity for the public to participate in setting the schedule. The 2005 Consent Order, in section XII, established dozens of deadlines for the completion of corrective action tasks required by the Order. These deadlines are enforceable, and many are subject to stipulated penalties (or enforcement action), under section III.G, if not met. This schedule, combined with stipulated penalties if it was not met, was very successful in prompting DOE to request and Congress to appropriate adequate cleanup funds. Until 2011 or 2012, when the Environment Department began summarily granting deadline extensions, these provisions of the 2005 Consent Order had been very effective in compelling DOE and its contractors to move forward with investigation and cleanup.	No change.

	The draft consent order would abandon these provisions and replace them with a so- called "campaign approach," expressly adopting this Orwellian DOE term, under section VIII. Under section VIII.A.3, it would be up to DOE, not the Environment Department, to select the timing and scope of each "campaign." The draft consent order contains no deadlines. Rather, under section VIII.B and C, each year DOE and the Environment Department would negotiate a schedule of 10 to 20 "milestone" deadlines for the next federal fiscal year. These milestones would be enforceable and subject to stipulated penalties. Additional "target" deadlines would also be negotiated for the second following fiscal year, but these targets would not be enforceable. Under section VIII.C, the milestones for any fiscal year would be determined in large part by appropriated funding.	
CV	Thus, the corrective action deadlines in the 2005 Consent Order would be extended indefinitely, with no final cleanup deadline. Enforceable deadlines for cleanup tasks would apply no more than one year into the future. These deadlines would be based DOE's chosen "campaign." Those deadlines would be negotiated each year, with DOE having the advantage. Negotiation of the annual schedule would take place behind closed doors, with no public participation, and no opportunity for the public even to comment on the schedule. And the annual schedule would be driven by DOE funding, rather than the schedule driving the funding – the approach of the 2005 Consent Order.	Yes – Sections VIII.C.3.d & VIII.C.4
Nuke Watch 2	P. 27: "Milestones scheduled for the current fiscal year are enforceable and subject to Stipulated penalties under Section XXXXV (Stipulated Penalties); targets are not enforceable and not subject to stipulated penalties." This is absurd to have enforceable milestones for only one year, when we all know that any genuine cleanup of LANL will take decades. It is also wrong to not hold DOE's feet to the fire over the long term when the Department has a terrible record of meeting long-term cleanup goals (and everything else, for that matter). Rather than abjectly surrender to that fact, any new Consent Order should be tough with DOE and simply enforce compliance (including with the use of	No change.

	stipulated penalties) with a detailed long-term compliance milestones schedule. There is a reason that DOE has been on the Government Accountability Office's High Risk List for 25 consecutive years, and it is simply not to be trusted. To propose milestones that are enforceable for only one year followed by unenforceable targets smacks of being a divide and conquer strategy to avoid comprehensive cleanup. Our recommendation is to strike this provision and replace it with a long-term compliance schedule that is robustly enforced by NMED. Those milestone dates can be adjusted or added to as needed, with the proviso that there be meaningful public participation while doing so.	
Nuke Watch 2	P. 27: "The Parties agree that DOE's project's plans and tools will be used to identify proposed milestones and targets." This is entirely wrong and clearly puts DOE in the driver's seat. Our recommendation is to strike this provision and replace it with a provision that DOE can propose project's plans and tools, which NMED may or may not approve. We also want to see unenforceable "targets" eliminated (what good are they anyway?), to be replaced by long term, enforceable compliance milestone schedules.	No change.
Nuke Watch 2	**All future work must have enforceable deadlines** 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 proposed 2016 Consent Order proposes a "campaign" approach with enforceable cleanup deadlines limited to the work scheduled only for that year, thereby ensuring that it would be open-ended without a final compliance date. Campaign deadlines would be negotiated each year between NMED and DOE and LANL with no public participation, no opportunity to comment on the proposed deadlines, nor a required public hearing. That is wrong. Any revised Consent Order should contain strong	Yes – Sections VIII.C.3.d & VIII.C.4

	public input provisions for the selection of campaign targets and deadlines. The revised Consent Order must ensure that all scheduled cleanup work has mandatory completion dates, which must be enforced by NMED. The annual schedule would be up to DOE's discretion, rather than the schedule driving the funding appropriated by Congress, which is the fundamental approach of the 2005 Consent Order.	
WM	Page 27, Section VIII.B.4.b. Why should NMED *certify* that a milestone has been met? NMED should only have to acknowledge in writing that the milestone has been met. How will NMED know that a milestone has been met when there is no deliverable to support it? What is the "specified timeframe"?	No change.
WM	Page 27, Section VIII.B.4.c. This paragraph indicates that Respondent will effectively control what will be done, when it will be done, and how much money it will commit to spend on cleanup for any given time period. NMED already has knowledge of what the major corrective action priorities should be for LANL, and it should compel the Respondent to find the resources it needs to do priority work, as well as periodically complete work on lower priority corrective action sites in order to work off "low hanging fruit". The latter is fully embodied in the schedules of the original Consent Order, which was designed to reasonably into account that not all work can be done over the next few years, but instead, will have to take place over an extended period of many years. The few and sometimes vague milestones listed in Appendix B, and the lack to doing significant field work, are collectively an example of the lame efforts that Respondent will commit to unless they are compelled by the NMED to do more (see also my Comment 68). The entire concept of NMED using Respondent's project planning tools should be eliminated from the Consent Order. Instead, the NMED should do its job as it has done so well in the past under the framework of the original Consent Order. Should the proposed Consent order not be abandoned, as it should be,	No change.

	NMED should specify in the proposed Consent Order the necessary "next step" for each corrective action site and require a deadline (call it a milestone if you want) to complete the step for each site (sites may be grouped into Operable Units, TAs, MDAs, or whatever type of group so long as it is clear what needs to be done for each site that falls within a group).	
WM	Page 28, Section VIII.B.5, first sentence. Once again, the use of the word "resources" allows for money to be a driver with regard to what kind of and when corrective action is conducted. Priorities should be based on risks to human health and the environment, not on whether Respondent can get money from Congress.	No change.
WM	25. Page 28, Section VIII.C.3, first sentence. Yet another place in the proposed Consent Oder where priorities and milestones will be influenced by funding levels. Priorities should be based on risks to human health and the environment, not on whether Respondent can secure money from Congress.	No change.
WM	Page 28, Section VIII.C.3.b. See my Comment 25.	No change.
WM	Page 28, Section VIII.C.3.c. See my Comment 25.	No change.
CCNS	**All Cleanup Work Must Have Enforceable Deadlines; The Cleanup Schedule Must Drive Funding, Not as Proposed with Funding Driving 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 proposed 2016 Consent Order proposes a “campaign” approach with limited enforceable cleanup deadlines for work scheduled only for that year, thereby ensuring that the campaign approach would be open-ended without a final compliance/completion date. Campaign deadlines would be negotiated each year through a closed “Annual Planning Process” between NMED, DOE and LANS with no public participation, no opportunity to comment	No change.

	on the proposed deadlines, nor a required public hearing. The Annual Planning Process must be opened up to public participation, opportunity for comment, and opportunity for a public hearing. The proposed 2016 Consent Order's annual schedule would be left to DOE's discretion. The 2005 Consent Order's fundamental approach is that the schedule drives the funding appropriated by Congress – not the funding driving the schedule as required in the proposed 2016 Consent Order. Any Consent Order must ensure that all scheduled cleanup work has mandatory completion dates, which must be enforced by NMED.	
MH	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.	No change.
DH	It seems to me that the purpose and intended consequences of this Consent Order are to eliminate the ability of NMED and the residents of New Mexico to pressure DOE to fulfill its responsibility for cleaning up the radioactive and hazardous waste moving in the soil and water from LANL's Cold War activities. NMED needs to keep the pressure on based on the requirements of 2005 Consent Order. Therefore, I oppose this "Campaign Approach" as underhanded!	No change
SGR	I believe that the Revised Consent Order, with its "structure for accomplishing work on a priority basis through cleanup campaigns with achievable milestones and targets" will allow for cleanup campaigns to be designed that can be site specific and flexible, with a built in annual planning process.	No change.
Santa Clara	As we understand it, it appears the Revised Draft LANL Consent Order would establish a clean- up "campaign"	No change.

	structure in which DOE could group together and determine how to prioritize like-minded or geographically close corrective action activities and projects. It appears that Appendix B would be used to list "milestones" for the various tasks in a given "campaign" but only for the next federal fiscal year and would set "targets" for a two-year period, and that such a listing of "milestones" and "targets" would be updated annually. Importantly, however, only missed annual "milestones" would trigger stipulated penalties against DOE by NMED.[1] "Targets" are unenforceable.	
San I	The Pueblo appreciates the DCO's action oriented approach with annual milestones which seems to be a more effective way to identify specific areas for cleanup activities based on priority importance and funding availability. This should allow for more targeted efforts to clean up the areas of highest risk and a better way to monitor DOE's compliance with the campaign milestones and to conduct enforcement for DOE's failure to complete those milestones. The Pueblo hopes that this will compel the use of DOE resources and funding for more actual cleanup work rather than administrative and legal activities.	No change.
2) Cleanup vs. Investigation		
Rio Arriba	I support accelerated cleanup over continuously studying and analyzing project after project. Removing a risk should be a priority.	No change.
EPA	We share your goal to expedite clean up at LANL, using the most efficient and effective processes available to fulfill our responsibilities to protect human health and the environment. We look forward to working with you to ensure that our RCRA and CWA roles are well coordinated and are transparent to the public we serve.	No change.
JA	In situations where the risk is minimal to human health and environment, no further action is the preferred remedy. It is difficult to understand why the cleanup of the hillside below TA-32 was necessary when the only perceived risk was to a few earthworms in a very small area. Earthworms are not an endangered species and population at risk [if there were any in the dry tuff on the canyon	No change.

	wall] was very small compared to the number of earthworms across the Laboratory and state. The small amount of contamination was on inaccessible hillside, was minor in scope, and the risk to humans and the environment was minimal. Because of its location and transportation risk, the worker and population risks were much higher than the risk mitigated and hundreds of thousands of dollars were spent. The contamination was more like a benign mole or freckle – best to be left alone.	
JA	NMED has and continues to have double standards for Los Alamos as compared to the rest of the state. For example, LANL was required to investigate for hazardous contaminants for a borrow pit created during the development of the Western Area in Los Alamos. Where else in New Mexico were borrow pits for housing developments required to be sampled? Of a more recent and egregious nature is the standard that any area from DOE/LANL must not have any anthropogenic contaminants prior to release from further action. This means any zinc from galvanized fence posts to polyaromatic hydrocarbons [PAH] from asphalt. LANL spent hundreds of thousands of dollars to remediate small amounts of PAH contamination prior to the development of the new Smith's complex. The fill brought in by Smith's contained asphalt bits and there was no response from NMED. PAH's can be found anyplace there is an asphalt pad or road. Zinc can be found wherever there is galvanized metal. Where else in NM are the landowners required to clean up all anthropogenic contaminants? Also, why does DOE continue to provide funding for such wrong-headed cleanups? The taxpayers deserve better. Uniform standards should apply statewide or the regulated community would have ample opportunity to file lawsuits claiming discriminatory practices by NMED.	No change.
JA	Do they want to do remediation? If so, where is the emphasis? There have been so many characterization wells [120] drilled [many of them of minor usefulness] that they've become a hazard. This was clearly evident after the Los Conchas fire when the Laboratory had to scramble to protect wells in canyons from excess runoff so that they wouldn't serve as a conduit to the groundwater. Several well failures have	No change.

	already occurred and the probability of future failures is high. Yet, NMED is considering that another 30 wells are needed for a cost of $120M. I learned a valuable lesson in the 1970s that a test core hole is a pathway to groundwater.	
Nuke Watch 1, KS	**The Proposed 2016 Consent Order Must Not Omit Detailed Requirements Found in the 2005 Consent Order** The 2005 Consent Order includes numerous detailed requirements for such things as well installation, sample collection, and preparation of work plans and reports. These ensure that the cleanup work is done properly, consistently, and according to standard industry practices. They also ensured that work plans and reports were consistent, easy for the Environment Department to review, and easy for the public to understand. The proposed 2016 Consent Order omits many such requirements, which should be corrected.	No change.
KS	Such items omitted, also dismisses the importance of our citizen voices which uses our taxpayer money and negatively impacts all aspects of our lives in Northern NM. Environmental injustice is created by sidestepping safety and when prior and informed consent is not applied.	No change.
KL	Strongly support emphasis on results-based corrective action.	No change.
CV	Lastly, the 2005 Consent Order includes numerous specific requirements for such things as well installation, sample collection, and preparation of work plans and reports. DOE chaffed at these requirements, but they ensured that the work was done properly, consistently, and according to standard industry practices. They also ensured that work plans and reports were consistent, easy for the Environment Department to review, and easy for the public to understand. The draft consent order would omit any such requirements. It would not even require the preparation of work plans for proposed cleanup activities. DOE no doubt will take advantage of these omissions, and as a consequence, the cleanup will be much more difficult for the Environment Department to oversee.	No change.
3) Annual Planning Process – Section VIII.C		
JZ	Little cleanup, however, has been accomplished in the last few years. Many fear that the new revised Consent Order, if adopted, would continue this recent downward trend. The new revised order does not	No change.

	have enforceable milestones for all cleanup projects from the beginning. Instead, the new plan is for NMED and DOE to decide every 1 to 3 years which sites will be addressed for cleanup "campaigns". This may allow Los Alamos to never address all the sites, and revert cleanup back to the way it was done before the 2005 Consent Order- with budget driving cleanup. This is contrary to the original purpose of the Consent Order, which was to compel DOE and LANL to get additional money from Congress for the cleanup.	
SN3	Is the update process strictly on an annual basis, or could there be specific event-driven reasons to modify? Annual process is definitely preferred, but NMED might consider including provision for modification when a driver is of sufficient magnitude that the annual process is not sufficiently responsive, such as in VIII.C.3)c).	No change.
SN3	Great process step to acknowledge the realities of the Federal budget process outside the control of DOE, yet provide for dialogue and transparent communication.	No change.
SN3	Good to provide for flexibility if appropriations change, but it is also important not to abuse this provision. Recommend setting more specific threshold criteria for events that would warrant change outside the annual cycle.	No change.
PR	Future cleanup must have enforceable deadlines, with the dates and schedule for completion available for review	No change.
RJ	All cleanup work should have scheduled enforceable dates with steep fines for not meeting those dates.	No change.
KW	Any new Consent Order must have a detailed, enforceable schedule of genuine cleanup milestones.	No change.
Nuke Watch 1	Suggested that NMED hold a public meeting following the annual update of the Appendix B (Milestones and Targets) to go through changes from the previous year.	Yes - Section VIII.C.3.d
Nuke Watch 1	**The Proposed 2016 Consent Order Must Not Allow Budget to Dictate Cleanup** The proposed 2016 Consent Order allows DOE to provide cleanup	No change.

	priorities based on anticipated budget, which is backwards. By the time NMED receives an estimated annual cleanup budget from DOE, the horse has left the barn. The original purpose of the 2005 Consent Order was to compel DOE and LANL to ask Congress for additional funds to accelerate cleanup. The giant loophole in the proposed 2016 Consent Order that allows DOE and LANL to say that they don't have sufficient funding and therefore can choose to exempt themselves from cleanup should be eliminated.	
KS	The proposed 2016 Consent Order allows DOE to pollute until a bigger mess is made and then to provide cleanup priorities based on anticipated budget. This is elementary education backwardly done. By the time NMED receives an estimated annual cleanup budget from DOE, the contaminants from DOE LANL operations have a mule carry its dirty work. The original purpose of the 2005 Consent Order was to compel DOE and LANL to ask Congress for additional funds to accelerate cleanup. The giant loophole in the proposed 2016 Consent Order that allows DOE and LANL to say that they don't have sufficient funding and therefore can choose to exempt themselves from cleanup should be eliminated. Why be in a business if DOE and LANL are not a sound for profit business partner operations provider? The giant loophole is for greedy giants that love the government hand outs of money and no responsibility for harmful practices with no standards of enforcement. Tribal members downwind and downstream of this business deserve NMED to be responsible entity, established for major policy enforcement for the betterment of sound and safe businesses. This is true even if the business operators are US government entities. Tribal members can call for justice in environmental injustice practices under tribal sovereignty. Whose responsibility is it to use money wisely and responsibly or pay the price of incompetence?	No change.
KL	Strongly support annual work plan approach. It is more transparent and is consistent with the rest of the DOE complex.	No change.
LA Co.	Several times in the past the County has requested that LANL cleanup or address a solid waste management unit ("SWMU") or a specific area based upon perceived risk, economic development or other reasons. The Order should permit the County to propose to NMED and DOE a re-prioritization of the cleanup or risk assessments of certain sites and require that NMED and DOE respond to the County's	Yes – Section VIII.B.5

	request. While matters of imminent endangerment would always take precedence in allocating resources, many of the projects involving investigation and corrective action do not rise to that level, in which case reasonable accommodation of the County's proposals would be both reasonable and appropriate.	
Nuke Watch 2	P. 28: "DOE shall update the milestones and targets in Appendix B on an annual basis, accounting for such factors as, for example, actual work progress, changed conditions, and changes in anticipated funding levels. This is called the annual planning process." What does that mean? How is that a "planning process," other than a prescription for DOE and LANL to get out of cleanup? "Actual work progress" is usually far slower than wanted, (witness the 2005 Consent Order). So does this "planning process" then condone lack of cleanup? How is it that DOE updates the milestones and target? It should instead be NMED that updates enforceable long-term milestones (again, eliminate "targets"). Perhaps the worst flaw of all in the proposed Consent Order is to empower DOE to update milestones according to anticipated funding levels. This is a prescription for failed cleanup, when DOE's track record already demonstrates declining cleanup funding for LANL, while funding for the Lab's nuclear weapons programs that caused the mess to begin with continues to climb. This is also true across the nuclear weapons complex, to us a clear *quid pro quo*, that is cuts to cleanup, nonproliferation and dismantlement programs to help pay for increased nuclear weapons research and production programs. Our recommendation is to completely delink the Consent Order from DOE cleanup budgets. Costs and budgets are DOE's problem. Go back to the original intent of the 2005 Consent Order, which was to make DOE and LANL get the money from Congress for accelerated	No change.

	cleanup. Enforce it with the vigorous use of stipulated penalties, with no milestone compliance extensions granted other than for trues cases of *force majeur*. Get DOE out of updating milestones (and eliminate "targets"), which NMED should be doing anyway.	
Nuke Watch 2	p. 29: "…the DAMs [Designated Agency Managers] shall meet to discuss the appropriation and any necessary revision to the forecast, e.g. DOE did not receive adequate appropriations from Congress…" Again, this is the Consent Order being held hostage to DOE funding. Instead, NMED should completely revamp the proposed Consent Order to eliminate any link to DOE funding. Use the Consent Order to make DOE go get additional cleanup funding.	No change.
Nuke Watch 2	On May 26, 2016, DOE released a press release, "*DOE Releases Draft Request for Proposal for Los Alamos Legacy Cleanup Contract"* which stated, "The total estimated value of the contract is approximately $1.7B over the prospective ten-year period of performance…" http://energy.gov/em/articles/doe-releases-draft-request-proposal-los-alamos-legacy-cleanup-contract This averages to $170 million per year, but the current proposed cleanup budget for Los Alamos is $189M for FY 2017. So it appears that, before it is even signed, the proposed 2016 Consent Order has failed to increase the cleanup budget for the next ten years. There is no mechanism spelled out in the proposed 2016 Consent Order to increase, or to even maintain, an annual budget. The whole 'Annual Planning Process' laid out in the proposed 2016 Consent Order must be scrapped, as it is a fatal flaw to achieving comprehensive cleanup at Los Alamos National Laboratory. As we have repeatedly stated, this is directly opposite to the intent of the original 2005 Consent Order, which was to make DOE and LANL get more money from Congress for accelerated, comprehensive cleanup.	No change.
Santa Clara	Santa Clara Pueblo is very concerned that the Revised Draft LANL Consent Order appears to allow DOE to propose changes mid-year to the annual schedule of enforceable "milestones" if DOE claims insufficient funding is available (or once a particular year's budget is set in a manner that cannot be changed). We	No change.

	understand NMED, as the regulator, making allowances for occurrences truly outside of DOE's control but we are quite concerned that clean-up at LANL will be held hostage to DOE's overall internal prioritization of its funding allocations from Congress. DOE simply does not have a proven track record of ensuring clean-up activity at LANL receives its fair share of overall DOE Environmental Management funding. Moreover, the point of having enforceable deadlines for clean-up with a long-term schedule is to help incentivize Congress to appropriate (and ensure DOE prioritizes) sufficient funding.[3] The Revised Draft LANL Consent Order appears to have only sort of enforceable deadlines that could change every year or even during the year, and the annual planning process does not appear to us to line up with the timeframes needed in Congress for appropriating longer-term "campaign" funding. This appears to be a fatal flaw that needs to be corrected.	
San I	Under Section VIII.C, there is an annual planning process to update the Solid Waste Management Unit (SWMU) and Area of Concern (AOC) list, the campaign list, and milestone and task list. Part of that process will involve determination of whether DOE has completed the milestones for the year. While the Pueblo is not a party to the DCO, the Pueblo would like to receive information and be involved during the annual planning process on DOE's proposed changes to any of the Appendix lists based on actual work completed, changed conditions or changed funding levels and whether NMED accepts DOE's proposed revisions. This is because the Pueblo could be directly impacted by the corrective action activities to be undertaken during a particular time period under the DCO and whether the milestones have been met, as well as whether the NMED accepts DOE's revisions, particularly to milestone timeframes or the type of corrective actions. Similarly, the Pueblo would like input in the sequencing of the campaigns that appears to be done as part of the annual planning process.	Yes – Section VIII.B.5 & VIII.C.3.d
Specific Comment Areas		
• **Public Participation**		

RCLC	In regards to deciding the best remedy for a given cleanup campaign our Board wants to ensure each of our communities and/ or the general public are alerted on all proposed remedies to ensure they can provide input on their suggestion for the best possible final cleanup. For instance, as it pertains to options for selecting the final remedy for MDA-A at TA-21, we advise the area be fully remediated versus a cap-and- cover solution, which will allow for a greater return to the community on cleanup investment.	No change.
RCLC	In addition to our aforesaid requests, we ask that the New Mexico Environment Department continue its allied movement with the Regional Coalition of LANL Communities in maximizing cleanup dollars at LANL. As we all are well aware of variable annual budget negotiations and the anticipated limitations of funding for Department of Energy's Environmental Management budget for cleanup, we ask that we are well informed of progress made and budgets anticipated for future fiscal years.	No change.
RCLC	Once the 2016 Consent Order is fully executed-and we are in full support of the sensible, yet expeditious approval of this updated Consent Order-we look forward to being updated on the milestones achieved and what next steps will be in getting the cleanup work accomplished.	Yes – Section VIII.C.3.d
JZ	It is also my understanding that the New Consent Order would expressly limit public participation requirements which is contrary to the 2005 Consent Order. It is important that all milestones, targets, annual negotiations and modifications mandate the opportunity of public review and comment. It is essential that the State and Lab make all communications, documents and submittals specified in this Consent Order readily available to the people of New Mexico and the world.	No change.
EPA	Suggested possible inclusion of a Public Involvement Plan (PIP).	No change.
SN3	The document correctly identifies a purpose as "provide for effective public participation", but the Draft Consent Order provides minimal, detailed public process description. Recommend the following requirement be considered for inclusion, with an Appendix G created as the placeholder location: "The DOE shall develop in consultation with the NMED a Community Relations Plan that aligns with and supports	No change.

	the goals and precepts of this Consent Order. The Community Relations Plan will be completed within 180 days of the effective date of this Consent Order and included as Appendix G."	
Rio Arriba	I appreciate the openness and transparency that NMED has used to explain and gain input for the new Consent Order. I believe there is nothing to hide in this process and it will only be made strong through this open public process.	No change.
HR	I would like to commend NMED for launching a very open and transparent public comment process for the new draft Consent Order. It is critically important that my constituents have the opportunity to both review and comment about the proposed order and that their concerns be addressed.	No change.
EPA	Consider requiring DOE to prepare, implement and maintain a public involvement plan addressing corrective action solely performed under the Consent Order. The EPA recognizes that both NMED and DOE perform routine public outreach (e.g. at NNMCAB Board Meetings); however, a formal plan may assist in building public confidence in the proposed campaign approach and annual planning process, both of which NMED highlights as key enhancements of the Consent Order. The EPA believes that modifications to Appendices A, B and C will be of substantial interest to the general public, NGOs and tribes.	No change.
PR	1) More opportunity must be given the public to voice our concerns, and for your agency and DOE to respond. In fact, the new Consent Order limits public participation in influencing decisions which affect our lives. We need a list of the status of all cleanup areas, with history and updates. All documents must be accessible and clear. 2) The public must be notified in a timely manner of public hearings on the new Consent Order.	No change.
JA	Once again I urge the activist groups to use their energy and skill to agitate for cost-effective and prompt cleanup to a reasonable standard. At the 2010 public hearing on the renewal of the 1989 RCRA permit [which was over ten years behind schedule] I noted that these groups had significant influence on NMED. I thought this influence would be useful to push for a bias for action. I sent them {Concerned Citizens for Nuclear Safety [CCNS], Nuclear Watch New Mexico [NWNM],	No change.

	Southwest Research and Information Center [SRIC] and Citizen Action New Mexico [CANM]} an email asking if we could work together to push for action – no response. So, I sent them a registered letter containing the email. CCNS and CANM wouldn't even accept the registered letter – they were returned to me unopened. NWNM and SRIC accepted the letter but there was no response. I had at least hoped for some dialogue but that did not happen because they weren't interested. I can only conclude that they feign concern for cleanup but their real interest is an inordinate influence. NMED should listen to their viewpoints but stand firm and not be unduly swayed by them.	
RJ	The public should have the opportunity to comment on all future drafts of the proposed new consent order. Leaving out the public is not good governance. In addition, the proposed new consent order should make all communications, submittals and documents specified in the proposed new consent order available to the public. The public should have ready access to all status reports relating to all cleanup at LANL.	No change.
KW	The new Consent Order would expressly limit public participation requirements which would be opposite from the 2005 Consent Order. I request that all milestones, targets, annual negotiations, and modifications require the opportunity for public review and comment.	No change.
KW	The State and the Lab must make all communications, documents, and submittals specified in this Consent Order readily available to the public. The State and the Lab shall notify individuals by e-mail of all submittals as specified in this Consent Order.	No change.
KW	I request that the public be given an opportunity for a hearing on the new Consent Order.	No change.
Nuke Watch 1	I also formally request that NMED provide the opportunity for a public hearing on the revised cleanup schedule and new completion date, in accordance with the New Mexico Hazardous Waste Act and the 2005 Consent Order.	No change.
Nuke Watch 1, KS	**The opportunity for a public hearing must be provided** • Any extension of a final compliance date must be	No change.

	treated as a Class 3 permit modification to the 2005 Consent Order and therefore requires a 60-day public comment period. • Any extension of a final compliance date under the 2005 Consent Order can be implemented only after the opportunity for public comment and a public hearing, including formal testimony and cross-examination of witnesses. • The Environment Department is legally required to follow these public participation requirements that explicitly incorporated into the 2005 Consent Order. • All issues raised in these comments are subject for a public hearing if there are unresolved issues (as we anticipate there will be).	
Nuke Watch 1	**The public deserves the opportunity to comment on all following drafts** • It seems likely that a later draft – after the Lab's and public comments are incorporated into a revised draft – and after closed-door negotiations between the Environment Department and the Laboratory – could be substantially different from the current draft. Our fears are magnified by the fact that the recently released DOE RFP for the LANL cleanup contract so closely mirrors the draft revised Consent Order, which cannot be coincidental. • I request that the public have the opportunity to review and comment on any further drafts of a revised proposed 2016 Consent Order.	No change.
KS	**The public deserves the opportunity to comment on all following drafts** • It seems likely that a later draft – after the Lab's and public comments are incorporated into a revised draft – and after closed-door negotiations between the Environment Department and the Laboratory – could be substantially different from the current draft. • I strongly request that the public have the opportunity to	No change.

	review and comment on any further drafts of a revised proposed 2016 Consent Order.	
Nuke Watch 1	**Public participation provisions in the existing 2005 Consent Order must be incorporated into the proposed draft 2016 Consent Order** • The proposed draft 2016 Consent Order explicitly limits public participation requirements incorporated into the existing 2005 Consent Order. • I request that all notices, milestones, targets, annual negotiations, and modifications require public review and comment, and the opportunity for a public hearing.	No change.
KS	**Public participation provisions in the existing 2005 Consent Order must be incorporated into the proposed draft 2016 Consent Order** • The proposed draft 2016 Consent Order explicitly limits public participation requirements incorporated into the existing 2005 Consent Order. • I strongly request that all notices, milestones, targets, annual negotiations, and modifications require public review and comment, and the opportunity for a public hearing.	No change.
Nuke Watch 1, KS	**All documents must be made public as required in the 2005 Consent Order** • The State and the Lab must make all communications, documents, submittals, approvals, notices of deficiencies and denials under any revised Consent Order readily and electronically available to the public. • The State and the Lab must notify individuals by e-mail of all submittals, as required in the 2005 Consent Order.	No change.
Nuke Watch 1, KS	**The Proposed 2016 Consent Order Must Not Extend the Original Final Compliance Date Without Required Public Participation:** The proposed 2016 consent order would indefinitely extend the final compliance date for completing corrective action at the Laboratory, without the opportunity for a public hearing with	No change.

	formal testimony and cross-examination of witnesses. Any extension of a final compliance date under the 2005 Consent Order requires a 60-day public comment period and the opportunity for a public hearing, including formal testimony and cross-examination. The Environment Department is legally required to follow these procedural requirements. The legal requirements that mandate a public hearing are clear. Section XII of the 2005 Consent Order establishes the compliance schedule for implementation and completion of corrective actions at specific sites at the Laboratory. This schedule is mandatory. The final report that was to be submitted under the 2005 Consent Order – therefore, the final compliance date – was the remedy completion report for the huge Area G waste dump, required to be submitted by December 6, 2015. The proposed 2016 Consent Order would indefinitely extend this final compliance date by not designating a specific final compliance date. But this revision must be treated as a major Class 3 permit modification. Section III.W.5 of the 2005 Consent Order explicitly provides for the preservation of full procedural rights for the public as follows: "This Consent Order hereby incorporates all rights, procedures and other protections afforded the Respondents [DOE and UC, now LANS] and the public pursuant to the regulations at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42) and 20.4.1.901 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment, administrative hearings, and judicial appeals concerning, for example, remedy selection decisions of the [Environment] Department." Thus, extension of a final compliance date under the 2005 Consent Order requires a 60-day public comment period and the opportunity for a public hearing, including formal testimony and cross-examination.	
KS	How legal can negating legality be seen as trustworthy of our	No change.

	confidence.	
Nuke Watch 1, KS	**The Proposed New Consent Order Must Not Limit Other Public Participation Procedures:** The proposed 2016 Consent Order expressly limits public participation requirements in a way that completely diverges from those provided in the 2005 Consent Order. As explained above, the 2005 Consent Order explicitly protects procedural due process rights available to the public. The proposed 2016 Consent Order explicitly removes these protections, as follows: "The Parties agree that the rights, procedures and other protections set forth at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42), 20.4.1.901 NMAC, and 20.4.1.902 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment, administrative hearings, and judicial appeals, ***do not apply*** to modification of the Consent Order itself. ***[Emphasis added]***" Thus, as proposed in the above language, the Parties (the Environment Department, Department of Energy and Los Alamos National Security, LLC) 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) and the New Mexico Hazardous Waste Act. This provision must be stripped from the proposed 2016 Consent Order.	No change.
KS	This is appalling and shocking that due process rights are deemed not necessary for a highly dangerous, highly explosive, toxic matters handling can cause an enormous lost of lives, watersheds, and land use of all peoples especially first nations tribal peoples whose land LANL and DOE are doing "For Profit" business. Our citizen rights needs to be upheld.	No change.
AL	Secretary Flynn has my full support with his plan to ensure that the public comment process will provide multiple opportunities to our constituents to comment on the draft proposal.	No change.

TF	It also limits public participation in the review and comment about cleanup proposals and specifically removes all public participation in any modification of a finalized 2016 Cleanup Consent Order.	No change.
LA Co.	We note that Section XXXIII of the Order provides that 40 CFR 270.42 is deemed inapplicable to the modifications of the Order. This provision is objectionable, as it has the effect of anticipatorily denying by fiat, public notice and involvement in changes to the Order without any attempt to distinguish between those modifications of import and public concern and those that merely pertain to housekeeping issues. This sweeping provision of the Order defeats the intent of the CERCLA Criteria, and is not consistent with certain aspects of the Resource Conservation and Recovery Act (RCRA, 42 U.S.C. 6901 et seq.). We suggest that only very minor (de minimis) items should change without a public process while a public notice should be published in all cases.	No change.
LA Co.	The Order identifies that it is, in part, settlement of a prior claim (section IV A (7)). RCRA, 42 USC §6973(d) provides for public process in the case of settlement and covenants not to sue (see section XXXIV of the Order). Since DOE is acting on behalf of the United States, it would appear that the public process requirement is triggered and the opportunity to review and comment is being provided in the promulgation of the Order. But that is a one-time event. The Order alludes to public process in several places (Section XVII B, Power Point # 10), suggesting that it is an on-going requirement. But neither the Order nor the attachments discuss the process with any specificity. It would be an improvement if there were a discussion of what events will trigger public process, how it will be performed (public meeting, media notice, internet posting, review and comment, et cet.), and how the public's input will be considered and incorporated in the decision-making process. Given the history and sensitivity of the enviro1unental issues at the Facility, the County's involvement as a public entity would be well served with more public process specificity. Such a process should be incorporated into the Order, establishing public involvement as a "requirement" for purposes of Section XXXVI, in which event it will be enforceable by consent of	No change.

	the Parties. This will also become enforceable through institution of a citizens suit pursuant to 42 USC §6972(a), although it appears that DOE may not have agreed to the applicability of that provision of law, as evidenced by the language in XXXVI B of the Order ("The State maintains that Citizens may sue...").	
ST	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.	No change.
KF	Finally, I urge you to make this process as open to public participation as possible. It is disturbing that the draft consent order expressly limits public participation requirements, reversing the policy in the 2005 Consent Order. All milestones, targets, annual negotiations, and modifications should have the opportunity for public review and comment.	No change.
KF	Please also allow the public to review and comment on any further drafts of the new consent order, ideally with public hearings. Please make all communications, documents, and submittals specified in this consent order easily available to the public. Please notify interested individuals by e-mail of all submittals as specified in this consent order.	No change.
CV	The draft consent order would effectively and indefinitely extend the final compliance date for completing corrective action at the Laboratory, without the opportunity for a public hearing with formal testimony and cross-examination of witnesses. This outcome would be contrary to the 2005 Consent Order and, more importantly, contrary to the HWA. It would thus be unlawful, and it would also be bad public policy.	Yes – Section VIII.C.4
CV	The legal requirements that mandate a public hearing are complex, but they are nevertheless clear. We begin with the 2005 Consent Order. Section XII of the 2005 Consent Order establishes the compliance schedule for implementation and completion of the corrective action at the Laboratory. This schedule is mandatory. The opening paragraph of section XII states that DOE and UC (now LANS) "shall" follow the specified compliance schedules for all of the corrective action tasks included in the order. The word "shall," of course, denotes a mandatory	No change.

	requirement. Tables XII-2 and XII-3 of section XII establish the compliance schedules for the submission of the work plans, reports, and other items that must be submitted to the Environment Department for review and approval. And the final report that is to be submitted under the 2005 Consent Order – the final compliance date – is the remedy completion report for MDA G. Tables XII-2 and XII-3 required it to be submitted by December 6, 2015, more than five months ago. The draft consent order would, ostensibly, extend this final compliance date indefinitely.	
CV	Next, we move to the federal regulations that govern the procedures – including public participation procedures – for modifying permits issued to hazardous waste facilities such as the Laboratory. These regulations have been adopted by the New Mexico Environmental Improvement Board, and incorporated by reference into the New Mexico Hazardous Waste Management Regulations. These regulations require a "Class 3" permit modification for an extension of a final compliance date. 40 C.F.R. § 270.42, Appendix 1 A.5.b, incorporated by 20.4.1.900 NMAC. Thus, if it were a permit requirement rather than a 2005 Consent Order requirement, any extension of the deadline for submission of the remedy completion report for MDA G would be a Class 3 permit modification. More on this later.	No change.
CV	Next we must ask, what is a Class 3 permit modification? Under the federal regulations, adopted by New Mexico, a Class 3 permit modification is one that requires the highest level of public participation. It can be made only after a minimum of a 60-day public comment period and the opportunity for a public meeting. 40 C.F.R § 270.42(c), incorporated by 20.4.1.900 NMAC.	No change.
CV	But the HWA takes it one step further. The HWA requires that prior to the issuance of a "major modification" to a permit, the Environment Department must afford "an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing." NMSA 1978, § 74-4-4.2(H) (2006). The difference in terminology is worth noting: Is a major modification synonymous with a "Class 3 modification"? The New Mexico regulations answer this question in the affirmative. They clarify that a "major modification" under the HWA is the same thing as a "Class 3	No change.

	modification" under the federal regulations. 20.4.1.901.B(6) NMAC. Thus, at least in New Mexico, a Class 3 permit modification can be accomplished only after affording the opportunity for an evidentiary hearing, with formal testimony and cross- examination of witnesses.	
CV	Now, finally, we come to the crux of the matter. The final compliance date that the Environment Department purports to extend – the deadline for submitting a remedy completion report for MDA G – is not a permit modification at all. It is a modification to the 2005 Consent Order. The federal regulations apply to permits because corrective action is in most cases (though not always) conducted under a hazardous waste facility permit. But the drafters of the 2005 Consent Order apparently recognized this regulatory gap, and they filled it. Section III.W.5 of the 2005 Consent Order explicitly provides for the preservation of full procedural rights for the public: This Consent Order hereby incorporates all rights, procedures and other protections afforded the Respondents [DOE and UC, now LANS] and the public pursuant to the regulations at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42) and 20.4.1.901 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment, administrative hearings, and judicial appeals concerning, for example, remedy selection decisions of the [Environment] Department. Thus, extension of a final compliance date under the 2005 Consent Order can be done only after the opportunity for a public hearing including formal testimony and cross-examination. The Environment Department is bound by law to follow these procedural requirements.	No change.
CV	The draft consent order would also expressly limit public participation requirements in a way that is a complete divergence from the 2005 Consent Order. As explained under Comment #2 above, the 2005 Consent Order explicitly protects certain procedural rights available to the public:	No change.

	This Consent Order hereby incorporates all rights, procedures and other protections afforded the Respondents [DOE and UC, now LANS] and the public pursuant to the regulations at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42) and 20.4.1.901 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment, administrative hearings, and judicial appeals concerning, for example, remedy selection decisions of the [Environment] Department. The draft consent order would take the opposite tack: The Parties agree that the rights, procedures and other protections set forth at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42), 20.4.1.901 NMAC, and 20.4.1.902 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment, administrative hearings, and judicial appeals, do not apply to modification of the Consent Order itself. Thus, any modification to the draft consent order that would constitute a "Class 3" permit modification (discussed in Comment #2) if corrective action had been required under a permit would not be subject to an opportunity for a public hearing. This "end run" around the requirements of the HWA, NMSA 1978, § 74-4-4.2(H), would be a stark and troubling departure from the 2005 Consent Order.	
Nuke Watch 2	Nuclear Watch also formally requests that NMED hold a public hearing on any revised Consent Order, as required by 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.) Please note that our position is that NMED is legally required to hold that public hearing in the event that there are unresolved issues between interested parties, as	No change.

	we believe there surely will be at this point in time. Our basis for saying that is that these requirements were explicitly incorporated into the 2005 Consent Order. We also communicated this directly to NMED Secretary Ryan Flynn long before the draft revised Consent Order was released, in a letter dated September 21, 2016, to which we never received a written reply (that letter is incorporated into these comments as Attachment A).	
Nuke Watch 2	If NMED goes on to approve the new Consent Order, we believe it will then be violating the legal requirements of the 2005 Consent Order by not implementing its public participation requirements. A substantially revised Consent Order is clearly a "major modification" in the legal sense, which in turn triggers required public participation requirements.	No change.
Nuke Watch 2	Finally, the public participation requirements that were incorporated in to the 2005 Consent Order should be incorporated into any revised Consent Order as well.	No change.
Nuke Watch 2	**The Environment Department must respond in writing to all public comments** We request that the Environment Department reply individually to each and every comment submitted. The Lab's comments and NMED's response to comments must be made public through LANL's Electronic Public Reading Room at http://eprr.lanl.gov/oppie/service.	No change.
WM	I looked for the NMED's justification for completely replacing the original LANL Consent Order with that being proposed. I did not find one, as a Fact Sheet for this action was not prepared (for example, the public notices don't mention a Fact Sheet and none is posted on the HWB's web page). The original Consent Order is still in effect, and contemplates modification of the Order. The original Consent Order in Sections III.J.1 and III.W.5 states that modifications of the Order are to follow the permit modification requirements of 20.4.1.900 NMAC incorporating 40 CFR 270.42, including preservation of all rights, procedures, and protections afforded the public.	No change.

	Given the latter, the complete replacement of the original Consent Order constitutes the equivalent of a Class 3 permit modification request (*see* 40 CFR 270.42(d)(2)(iii) and also C.8.a of Appendix I of 40 CFR 270.42). A Fact Sheet explaining and justifying the need to completely replace the original Consent Order should have been prepared by the NMED in accordance with 20.4.1.901.D NMAC, but one was not. I find it odd that such an omission would have been missed by HWB managers, as they have decades of experience between them doing public notices for permit modification requests.	
WM	I'll further add here that because NMED did not provide a Fact Sheet that explains the rationale for replacing the original Consent Order, NMED did not properly follow requirements of the original Consent Order at Sections III.J.1 and III.W.5, and thus that for a Class 3 permit modification request. This failure to follow proper process for the equivalency of a Class 3 permit modification request opens the door to a citizen law suit. I noticed also that the public was not reminded by the public notices of their opportunity to request a hearing on this particular matter.	No change.
WM	72. I request that a public hearing be held in this matter as required under Section III.W.5 of the Consent Order (currently in effect), and in accordance 20.4.1.901.A.5 NMAC. My comments above provide justification for this request.	No change.
CCNS	CCNS and Gilkeson request that NMED hold a public hearing on a 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, CCNS and Gilkeson request that NMED hold a public hearing on a proposed 2016 Consent Order. Id. In order to address significant and outstanding issues stated in our comments, however, CCNS and Gilkeson request	No change.

	that a public hearing be scheduled. CCNS and Gilkeson are hopeful that our concerns may be resolved in advance of a public hearing, and, if successful, will immediately withdraw the hearing request.	
CCNS	**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. For example, Section VII.G states: > The Parties [NMED and DOE] agree that the rights, procedures and other protections set forth at 20.4.1.900 NMAC (incorporating 40 C.F.R. § 270.42), 20.4.1.901 NMAC, and 20.4.1.902 NMAC, including, but not limited to, opportunities for public participation, including public notice and comment, administrative hearings, and judicial appeals, ***do not apply*** to modification of the Consent Order itself. [Emphasis added.] Thus, as proposed in the above language, the Parties have inappropriately agreed to remove the due process rights, procedures and other protections provided to the public under RCRA, the New Mexico Hazardous Waste Act and the 2005 Consent Order. This provision must be stripped from the proposed 2016 Consent Order.	No change.
CCNS	**NMED Must Provide the Public with the Opportunity to Comment on All Drafts of the proposed 2016 Consent Order** In 2002, NMED released a draft Consent Order for public review and comment. Following the 18 months of closed	No change.

	door negotiations between NMED, DOE, the University of California (the predecessor of LANS), and the New Mexico Attorney General, a final 2004 draft Consent Order was released for public comment. NMED should follow the applicable federal and state regulations and established precedent to provide for public review and comment for all future drafts of the proposed 2016 draft Consent Order. 40 CFR 270.42(c)(6).	
CCNS	**The Environment Department Must Respond in Writing to All Public Comments** The Environment Department must reply individually to each and every comment submitted by the public and DOE and LANS. NMED must require that all DOE, LANS and public comments and NMED's response those comments be made public through LANL's Electronic Public Reading Room at http://eprr.lanl.gov/oppie/service.	No change.
CCNS	**All Documents Must Be Posted to LANL's Electronic Public Reading Room** The Environment Department, DOE and LANS must 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 readily and electronically available to the public through LANL's Electronic Public Reading Room at http://eprr.lanl.gov/oppie/service. DOE and LANS must notify individuals by e-mail of all submittals to the Electronic Public Reading Room.	No change.
CCNS	**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 detailed	No change.

	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.	
MH	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.	No change.
MH	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.	No change.
MH	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.	No change.
MH	NMED must promptly provide the public with a concise document about the current status of every site listed in the 2005 Consent Order,	No change.

	including a scheduled completion date or verification that the cleanup work has been completed.	
MH	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.	No change.
DH	It is imperative that we, New Mexicans, are updated on all progress of this clean up or the lack thereof. Compliance dates must be set. Our right to make comment must be preserved. And in the event of violations our Attorney General should be consulted for consideration of legal actions.	No change.
SGR	Additionally, the Revised Consent Order retains the public participation component so essential to the original Consent Order of 2005, so that all impacted stakeholders can participate in a process that will be highly transparent.	No change.
Santa Clara	Worse yet, unlike the previous Consent Order issued in 2005, it appears that any or all aspects of the Revised Draft LANL Consent Order, once adopted, could undergo further modifications without any public input or government-to-government consultation. This contravenes NMED's *Tribal Communication and Collaboration Policy* (Dec. 17, *2009)(see, e.g.,* Section V.A) and our own historic, comprehensive *Memorandum of Agreement between the New Mexico Environment Department and Santa Clara Pueblo* (Dec. 20, 201*O)(see, e.g.,* Attachment B to the MOA, Sections A. 2 and 4). Santa Clara Pueblo requests that this be corrected as well.	Yes – Section XXXIII.C
Santa Clara	Santa Clara Pueblo respectfully requests that NMED issue a written response to all of our comments and concerns and that we have an opportunity to consult with NMED on that written response before a new Consent Order is finalized. We also believe the document should be further revised based upon the comments received and circulated again for public review and comment before it is finalized. Clean-up of legacy wastes at LANL is too important to rush into a completely new structure without real scrutiny and dialogue and consensus on a path forward. Personally, I look forward to having a continued dialogue with Secretary Flynn on these important issues.	No change.
• **Jurisdiction- Section I**		

EPA	There is a statement in the order "In the event DOE asserts that it cannot comply with any provisions of this Consent Order under RCRA based on an alleged inconsistency between the requirements of RCRA and the AEA, as amended, it shall provide the basis for the inconsistency assertion in writing." There needs to be sentence included in the order indicating that NMED will respond to this assertion.	No change.
SN3	Section I.C - Inclusion of CERCLA authority through EPA would provide leverage on radionuclides and the radioactive portion of mixed wastes, although would require more complex regulatory authority model. Workarounds in this draft to provide for some NMED control of radionuclide issues are generally good.	No change.
• **Purpose and Scope – Section II**		
SN3	Section II.D.1 - Recommend post-remedial monitoring, stewardship, and reporting be added to the process for corrective actions. These are necessary post-closure steps that both NMED and the public will require. While these steps don't need to be detailed in this agreement, they should be mentioned to provide a full regulatory cycle picture.	No change.
SN3	Section II.D.5.c - Consider also adding international lessons learned. DOE-EM has recently expanded their linkages to the United Kingdom and France for potential lessons.	No change.
JA	It is encouraging to read in Section II.D on governing principles that there is recognition that the process should be an action-oriented, cooperative approach that is cost effective. It will take a great deal of cooperative effort to ensure this happens. It may require direct involvement or direction from the governor herself.	No change.
Nuke Watch 1	**Existing Violations Must Not Be Eliminated** Section II.A of the proposed 2016 Consent Order would "settle any outstanding violations of the 2005 Consent Order." This is a get out of jail free card. Without enforceable schedules from the beginning, any consent order is not truly unenforceable, and the Environment Department would be abdicating its responsibility to protect human health and the environment as required by the federal Resource Conservation and Recovery Act (RCRA) and the New Mexico Hazardous Waste Act. NMED must not surrender its regulatory and enforcement powers!	No change.

KS	Section II.A of the proposed 2016 Consent Order would "settle any outstanding violations of the 2005 Consent Order." This is elementary education application of a card board game. The intelligence of our governing body is in question. Without enforceable schedules from the beginning, any consent order is truly unenforceable, and the Environment Department would be abdicating its responsibility to protect human health and the environment as required by the federal Resource Conservation and Recovery Act (RCRA) and the New Mexico Hazardous Waste Act. NMED must not surrender its regulatory and enforcement powers! Again, where is the logical intelligence of NMED? Is it reverting back to the "Thinking from the Colon of MAN" Hence "colonizers" concept of wipe all signs of life and no justification is needed. We citizens of sovereign nations, citizens of NM need to be shown environmental violence is not protected or promoted by the NMED. Our UN human rights will and can be a source of guidance of justice if states do not annex themselves from such mad cow disease (Milking the US Government cow).	No change.
AL	I am pleased that the new Consent Order will do three things: 1. Protect the environment; 2. Reduce risks to our constituents; and 3. Potentially create more cleanup jobs.	No change.
CV	Further, under the draft consent order, if adopted, the State of New Mexico would forego collecting potentially millions of dollars in civil penalties owed by DOE and its contractor for violating the 2005 Consent Order. The State would forego collecting these penalties at a time of severe revenue shortfalls. Yet, under the draft consent order, the Environment Department gets nothing in return for foregoing collection of these penalties. The Environment Department only makes further concessions.	No change.
CV	Under the draft consent order, the Environment Department would forgive DOE and its contractor for potentially millions of dollars in civil penalties owed to the State for violations of deadlines in the 2005 Consent Order. And the State would get nothing in return.	No change.
CV	The 2005 Consent Order, in section XII, established dozens of deadlines for the completion of myriad corrective action tasks required by the Order, including completion of investigations at individual sites, installation of groundwater monitoring wells,	No change.

	submittal of groundwater monitoring reports, evaluation of remedial alternatives for individual sites, and completion of final remedies. These deadlines are enforceable, and many are subject to stipulated penalties, under section III.G, if not met. Alternatively, under section III.G.7, the Environment Department can seek civil penalties for missed deadlines in an enforcement action. Although the Environment Department granted DOE and LANS more than 150 extensions of these deadlines, by 2014 the Department began denying extension requests. Consequently, DOE and LANS are liable for potentially millions of dollars in penalties for violation of the 2005 Consent Order.	
CV	But the draft consent order would forgive these violations, with DOE and LANS paying no penalties at all. Rather inconspicuously, section II.A of the draft consent order states that it "settles any outstanding alleged violations under the 2005 Consent Order." And the State gets nothing in return for this concession. Forgiving DOE and LANS for potentially millions of dollars owed to the State for repeated violations of the 2005 Consent Order is bad public policy especially given the State's current budgetary shortfalls. Penalties for these violations should be assessed and collected in accordance with the 2005 Consent Order and the Environment Department's civil penalty policy.	No change.
Nuke Watch 2	**Existing Violations Must Not Be Eliminated** Section II.A of the proposed 2016 Consent Order would "settle any outstanding violations of the 2005 Consent Order." This is a get out of jail free card. Without enforceable schedules, any consent order is not enforceable. 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.	No change.
WM	Page 4, Section II.B.1-8. Except for the establishment and the use of the terminology "campaigns", the original Consent Order already has accomplished these purposes. "Campaigns", in the proposed Consent Order, are really nothing more than a site or combination	No change.

	of sites, which may have or not have an associated milestone.	
WM	Page 4, Section II.B.7. This Section of the proposed Consent Order states that it will provide for effective public participation. Effective public participation is adequately addressed in the original Consent Order (see Sections III.J.1, III.W.5, III.Z, IV.A.3.g, VII.D.7, and VII.E.4). However, unlike the original Consent Order, the proposed Consent Order (in Section XXXIII) eliminates public input concerning future modification of the Consent Order itself. Such public participation was of significant importance to citizens when the original Consent Order was being developed. Furthermore, the process set forth in the proposed Consent Order requires that modification will be a frequently recurring event, and the public will have no say with regard to future changes. Realistically, it will take decades to complete corrective action even with the best of intentions. From a practical standpoint, modification of an order on consent requires, at least prudently, (costly) legal review and senior management review and approval, all which consumes considerable time and resources. Thus, consent orders are not typically signed with the intent that they will be frequently modified. If approved, the proposed Consent Order will lock NMED's future senior management into a burdensome and poorly designed process with no way to escape until termination of the Order (so until corrective action is completed at the Facility, see also Comment 64). The proposed Consent Order is so heavily weighted in the Respondent's best interests (especially considering funding levels) that Respondent will have no incentive to support changes that would eliminate its advantages. And NMED will have no way of the terms of the Order, unless Respondent agrees	No change.
WM	Page 5, Section II.D.2.a. The guiding principle regarding mutually-agreed results is not founded in common sense or sound technical reasoning, as it is not possible to anticipate all results of an investigation or cleanup, and it is not even required that the Respondent accepts NMED's positions on actual results. What really matters is that NMED accepts the results, and Respondent's responses to results are adequate to protect human health and the environment. Furthermore, the phrase "makes optimum use of	No change.

	available resources" implies, as is rife throughout the proposed Consent Order, that money will be a driving factor with respect to what is actually to be accomplished over any given time period rather than risk to human health and the environment, or even to expedite clean up. I suggest deleting this statement as it adds nothing of material worth to an enforceable document.	
WM	Page 5, Section II. D.2.b. Clarify this statement to define "full protection", a term I've not familiar with even given my many years of experience, as the regulations require only that the Respondents do what is adequate to protect human health and the environment. The Respondents are not required to go beyond what is adequate, even if it means protection will be increased. If I'm not familiar with the term " full protection", it's probably safe to conclude neither generally is the public.	No change.
WM	Page 5, Section II.D.2.f. Clarify this statement to define "risk-informed guidance", a term I've not familiar with even given my many years of experience. If I'm not familiar with the term, it's probably safe to conclude neither generally is the public.	No change.
WM	Page 5, Section II.D.2.h. This guiding principle is already incorporated in the original Consent Order at Section VII.F. The current belief, obviously expressed by this guiding principle, that there is some kind of prohibition against accelerating cleanup has no basis, and certainly does not constitute a reason to vacate and replace fully the original Consent Order. Furthermore, the process embodied in the proposed Consent Order to consider Respondent's funding levels for cleanup will work against accelerated cleanup.	No change.
WM	Page 5, Section II.D.2.i. This guiding principle is not based on sound technical reasoning and should be deleted. Prior data indicating low risk may not be reliable with respect to data quality or for other considerations with respect to conceptual site models. That is why all such data should be discussed in Investigation Work Plans, subject to review and approval of the NMED.	No change.
WM	Page 5, Section II.D.2.j. This guiding principle is already incorporated in Section III.V of the original Consent Order. During my long tenure with the NMED, technical staff were directed by HWB management (including myself) and in good faith complied with said direction to not ask for information that was not needed to	No change.

	reach a decision on a corrective action, permitting, or enforcement action. The current belief, obviously expressed by this guiding principle, that there is a problem with NMED staff asking for unnecessary information (increased volume of paperwork) has no basis, and certainly does not constitute a reason to vacate and replace the original Consent Order.	
CCNS	**NMED Must Not Give DOE and LANS a "Get Out of Jail Free" Card - Existing Violations Must Not Be Waived** Section II.A of the proposed 2016 Consent Order states, This Consent Order supersedes the 2005 [Consent] Order and settles any outstanding alleged violations under the 2005 Consent Order. This is a "get out of jail free" card for DOE and LANS. Knowing that this provision may be available to them, DOE and LANS may encourage NMED to investigate "alleged violations" so that, if and when a new Consent Order is issued, DOE and LANS might have immunity from alleged violations under 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.	No change.
• **Definitions – Section III**		
EPA	Consider adding a definition for "Presumptive Remedy", including applicable citations to EPA Policy/Guidance.	Yes - Section III.EE
EPA	Area of Contamination- consider citing applicable EPA Guidance (e.g. March 13, 1996 EPA memo, "Use of the Area of Contamination Concept During RCRA Cleanups").	Yes - Section XIV instead of definitions
EPA	Facility- Are other sites (e.g. TA-57 Fenton Hill) that are not on land presently owned by DOE considered to be part of the Facility?	No change. TA-57 SWMUs/AOCs are part of the Consent Order Scope (see Appendix A)

SN3	Execution of the DAM role is critical to success of this Consent Order. The DOE's lead EM Contractor, although not a DAM, will have routine interface with the DAMs for execution. Consider adding language here or III.L or other location to reflect this key DOE Contractor role: "DOE shall be responsible for satisfying the requirements of this Consent Order regardless of whether DOE carries out the requirements through its own employees, agents, and support contractors, or through its Legacy Cleanup Contractor. Upon the request of NMED, DOE shall provide the identity and work scope of its Legacy Cleanup Contractor and any first or second tier subcontractors used in carrying out the requirements of this Consent Order, including the names and positions of the key responsible individuals for executing those requirements."	No change.
SN3	Suggest clarification that the "groundwater" requirement pertains to a potable or agricultural water supply. Many wells can produce water, but due to mineral content or salinity are unusable for any purpose.	No change.
SN3	"Fiscal year" is not defined. Recommend adding a definition or an affirmative statement that the New Mexico fiscal year is the same as the Federal fiscal year. Several uses of the term specify the Federal fiscal year, but this is not universal throughout the document.	Yes – Section III.P
WM	Page 8, Section III.N. The definition for explosive compounds should be clarified that it applies to corrective action conducted outside the authority of the Hazardous Waste Management Regulations (20.4.1 NMAC). Under RCRA Subtitle C, there are substances that are explosive (reactive and ignitable) and that are not listed in the definition presented in Section III.N of the proposed Consent Order. Also, it is not clear why this definition is even needed.	No change.
CH2M	Use of the lists in C.F.R. Part 261, Appendix VII and 40 C.F.R. Part 264, Appendix IX in developing sampling strategies can drive costs by forcing analyses of constituents not expected on sites. A recommendation would be to use a DQO process to guide potential COC identification.	No change.
San I	In Section III. Definitions, "Groundwater" is defined as "interstitial water which occurs in saturated earth material and which is capable of entering a well in sufficient amounts to be utilized as a water supply." Later, in Section IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW, the statement is made that "Contaminants have been detected beneath the Facility in all four groundwater	No change.

	zones." The DCO should clarify that all four groundwater areas do in fact supply water "in sufficient amounts to be utilized as a water supply." If this is correct, it should be stated explicitly. The Pueblo must point out that there are several downgradient wells and springs on Pueblo land that could be impacted due to the hydraulic nature of the groundwater on the Plateau and should also be considered when addressing the groundwater contamination activities because of future development and continued traditional use by the Pueblo.	
• **Findings of Fact and Conclusions of Law – Section IV**		
WM	Page 17, IV.A.6.m. The paragraph states that the Respondent claimed that meeting the requirements of the 2005 Consent Order was difficult due to a lack of funding. Furthermore, it indicates that NMED management was willing to renegotiate the Consent Order, apparently in light of the Respondent's complaint of the shortage of money. Again, the proposed Consent Order is rife with statements indicating that a lack of funding should be considered when setting schedules and work requirements for corrective action (presumably to provide relief to the Respondent). In this way, the proposed Consent Order is weakened compared to the original Consent Order. Whether private or government owned, funding is always difficult to obtain and is always cited as an excuse to delay, or not due adequate investigations and cleanups. I have 25 plus years of experience to back this up. Furthermore, the **main reason** why the original Consent Order was developed was to give the Respondent stronger justification to seek and acquire from Congress cleanup funds for the LANL Facility (the same was the case for Sandia National Laboratories environmental Restoration Project). The DOE explained during development of the original Consent Order that Congress funded DOE sites first based on the priority to meet obligations under corrective action orders and similar enforceable documents. If the NMED now allows funding to be used as an excuse to delay, or conduct cheaper but inferior, corrective actions, as seems contemplated by the processes described in the proposed Consent Order, the result will be that the LANL Facility will be of lower priority to Congress, and funding will be more difficult for the Respondent to acquire. This works against accelerating cleanup and against doing adequate and proper investigations and remediation.	No change.

• **Parties – Section V**		
SN3	Please clarify the status of the Legacy Cleanup Contractor if signatory to the agreement per last sentence in paragraph V.B, but not a Party.	No change.
KL	I do not support adding the contractor as a party. DOE owns the environmental issues at LANL. If the contractor is a party it allows finger pointing instead of having the responsibility rest with the "owner". The contractor will have financial incentives to meet campaign deadlines and it could result in something like the drum incident happening again. I think having DOE as the sole respondent would provide a "check" for the campaign approach. In addition, DOE would have more incentive to go after the contractor's liability coverage.	Yes – Section V
Nuke Watch 2	**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 LANS, a limited liability corporation, and management contractor at LANL, as a Party to the Order.	No change.
CCNS	**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. The management contractor must be a party to the Consent Order.	No change.
MH	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.	No change.
CH2M	Please provide additional clarification on the difference between a signatory and a Party in participation, including the ability to request and participate in DAM meetings and coordinating implementation of the consent order.	No change.
• **Work Already Completed/Submitted – Section VI**		

SN3	The commitment to action in this paragraph is excellent, but will there be a 'bow-wave' effect which will make it difficult for NMED to achieve this action consistent with the schedules in Appendix D? Best to start a new agreement with solid wins on both sides, not frustrating and overly difficult schedules.	No change.
WM	Page 22, Section VI.A. This Section states "This Consent Order shall be construed to avoid duplication of work already performed or completed as determined by NMED pursuant to its current HWA authority or by EPA pursuant to its RCRA authority prior to delegation of the RCRA program to the State. Accordingly, all such work that has been completed prior to the effective date of this Consent Order, that fulfills the substantive requirements of this Consent Order, and that has been approved by NMED or EPA, in writing, shall be deemed to comply with this Consent Order." While this has been general practice executed by the NMED under the original Consent Order, I see no advantage for NMED to limit itself forever that it must accept EPA past approvals. This is another Respondent advantage. Unless new information surfaces, NMED is unlikely to revisit SWMUs/AOCs that have already been approved for Corrective Action Complete status. While today, EPA technical staff are well trained, that was not always true in the past and mistakes were made. For example, a solid waste management unit (SWMU) at Sandia National Laboratories was approved by EPA for Corrective Action Complete status in the past. However, corrective action was again required for the site many years later for the very reason why the site was originally listed as a SWMU (a mercury spill). I suggest removing all references to EPA's approvals in a manner to remove the unnecessary limitation on the NMED's authority. NMED should be able to re-open a site approved by EPA for Corrective Action Complete status or for any other purpose when information is discovered that suggests contaminants pose an unacceptable risk to human health or the environment.	No change.
San I	Section VI. of the DCO refers to work already completed by DOE prior to the effective date of the DCO that meets the substantive requirements of the DCO will be deemed to comply with the DCO. The Pueblo would like to know what work has been completed to	No change.

	date and approved or accepted by NMED under the 2005 Consent Order.	
• **Relationship to Permits – Section VII**		
LA County; San I Pueblo	Commenters raised a concern about future modifications to the Consent Order. What happens when the Administration changes?	Yes - Section XXXIII.C (moved to the 'Modification" section)
EPA	Under RCRA, EPA is responsible for ensuring that the state program is as stringent as the Federal Program. Our oversight is at the program level, and we typically do this via select permit reviews and mid and end of year reviews of the entire state program. Because this draft Order functions in many ways as a corrective action permit, we have considered the structure and function of the draft Order much like we would in a permit review. With this in mind, we want to be sure that the connections between the permit and the order are clear and ensure that the public has an effective level of participation. Therefore, the permittee should be asked to submit a permit modification request as soon as changes are complete to ensure the appropriate Order is referenced in the permit.	No change.
EPA	Under the Clean Water Act (CWA), we are responsible for issuing National Pollution Discharge Elimination System (NPDES) storm water permits in New Mexico. The draft storm water permit currently in process identifies several Solid Waste Management Units (SWMUs) and Areas of Contamination {AOCs) that are not covered by the RCRA permit or draft Order. Our goal is to make certain that there are no gaps in regulatory coverage between the RCRA permit or draft Order and the storm water permit. Please reflect EPA's responsibility to determine coverage for SWMUs and AOCs in the individual NPDES storm water permit.	Yes – Section VII.H.2
EPA	Relationship to Permits (page 23): Suggest modifying the first sentence as follows: "The Parties enter this Consent Order based on their understanding that, for NMED's purposes, this Consent Order shall be..." (emphasis added to indicate suggested change) .	No change.
EPA	VII.D. Relationship to Permits (page 24): As corrective action complete (CAC) determinations are accumulated, the DOE is encouraged to periodically request permit modifications reflecting proposed changes to the tables in Permit Attachment K. This will provide concrete demonstrations of cleanup progress, allow NMED and DOE to receive credit for completing corrective action at parts of the facility and	No change.

	provide opportunities for public comment. If, as NMED anticipates, cleanup is accelerated under the Consent Order, waiting an extended period of time to process permit modifications for CAC may place an undue burden on NMED and the public.	
EPA	Relationship to Permits (page 25): Insert "and EPA" after DOE.	Yes – Section VII.H.2
KL	Strongly support the clarification that 20.4.1.900 NMAC does not apply to a compliance order.	No change.
KL	Strongly support eliminating dual regulation for SWMUs and AOCs that are in the IP (IX.H too)	No change.
WM	Page 22. Section VII.A. The first sentence in the first paragraph should be revised to include regulations under RCRA that are specific to corrective action, in particular 40 CFR 264 Subpart F. Environmental regulations are usually more detailed, often times prescriptive, and are easier to enforce than laws.	No change.
WM	Page 23, Section VII.B. The second sentence should be clarified to indicate that the Permit will not contain any requirements duplicative of the Consent Order, *except as they may apply to the five circumstances indicated in Section VII.A.1-5.*	No change.
WM	Page 24, Section VII.C, last sentence indicating that the Consent Order is an enforceable document. While this may be the intent of the proposed Consent Order, as explained in my Comment 70, some descriptions of milestones in the proposed Consent Order are so vague that is questionable whether NMED could actually enforce a corrective action activity and its associated milestone in a court.	No change.
WM	Page 24, Section VII.D., last sentence. I suggest clarifying to read at the end of the sentence " ...except for SWMUs and/or AOCs for which Respondent has been granted a permit modification for corrective action complete status".	Yes – Section VII.D
WM	Page 24, Section VII.F. I suggest adding the governing regulations for corrective action at 40 CFR 264 Subpart F to the list of regulatory authorities in this paragraph.	No change.
WM	Page 24, Section VII.G. This paragraph and its intent should be deleted from the proposed Consent Order as it eliminates from the original Consent Order the right of public participation with regard to future modification of the Consent Order. As a consequence, the public will not be able to comment on such matters as schedules for corrective action sites beyond those currently included in the list of milestones in	No change.

	Appendix B of the proposed Consent Order. See also Comment 67. I recognize that NMED and the Respondent do not want to public notice changes to the Consent Order in the future because the Order will be modified often (at least annually), and because allowing for public participation constitutes considerable work. Also the public may not agree with the new work listed in Appendix B in the future which will only be assigned with milestones after consideration of Respondent's funding levels. An unhappy public is not something the NMED wants to face.	
WM	Page 25, Section VII.H. This Section should be deleted in its entirety. I see no reason for NMED to give up its right to question the adequacy of, and override approvals or decisions made by EPA or Respondent concerning potential releases of contaminants into storm water from SWMUs/AOCs, whether a SWMU/AOC is covered under an existing or NPDES permit or is not. The purposes of the Consent Order should be based on protection of human health and the environment, not on avoiding repeat work (which will be rare) just to save time and money and give an impression of progress.	No change.
CH2M	Please provide clarification on the path forward if the DAM meetings does not result in agreement.	No change.
• **Cleanup Objectives – Section IX**		
SN3	Provision to consider impractical remedy is very good, but in practice is brutally difficult to justify to the public why a risk process which allows greater contamination to remain is selected over an established standard. Call-out of EPA published guidance helps.	No change.
SN3	NMED may want to consider a more defined and explicit process to support their decision in the public forum. Ultimately, NMED will need to defend the decision, and the process needs to support NMED's decision as developed by the DOE, more so than maintaining NMED decision authority over the DOE.	No change.
EPA	Cleanup Objectives and Cleanup Levels (page 31): The Consent Order references RAGS Volume 1, Part A (1989). Newer parts of RAGS (notably Parts E (dermal exposure) and F (vapor inhalation) are also applicable and should be cited. This applies to other locations where RAGS Part A is referenced.	Yes- Section IX.E

Nuke Watch 1	**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 would be allowed to demonstrate to NMED that any particular "cleanup objective is impracticable." To do this, DOE may consider such things as 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 can then propose alternative cleanup methods using site-specific risk assessments. All of this could take place behind closed doors, as there are no public participation requirements in this section. Please clarify what cleanup levels will be used and when and where they will be applied.	No change.
KS	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 would be allowed to demonstrate to NMED that any particular "cleanup objective is impracticable." To do this, DOE may consider such things as 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 a finding of too incompetent to be trusted with such an important responsibility is not found. Who is the incompetency to be referred to?? If NMED approves the impracticability request, DOE can then propose alternative cleanup methods using site-specific risk assessments. All of this could take place behind closed doors, as there are no public participation requirements in this section. Please clarify what cleanup levels will be used and when and where they will be applied. This also must happen for a US government operation to meet the UN Declaration on the Rights of Indigenous Peoples, Article 32.1, 2, and 3.	No change.
CV	The draft consent order also appears to weaken the cleanup standards specified in the 2005 Consent Order. For example, the draft consent	No change.

	order seems to provide in section IX.F that tap water screening levels would apply only if the water has a present or reasonably foreseeable future use as drinking water. This is not a concept found in the HWA, or RCRA, but is taken from the New Mexico Water Quality Act. It was not included anywhere in the 2005 Consent Order. It should not be an issue at the Laboratory, because all the groundwater underlying the Pajarito Plateau is a potential source of drinking water. But DOE, no doubt, under certain circumstances, make an issue of it. And it can be very controversial. The Environment Department, under the two previous administrations, spent some ten years litigating the issue over the Tyrone mine in Grant County. There is no reason that the Environment Department should concede in any way this issue here. The provision on cleanup standards is in other places poorly written and not comprehensible. It should not be adopted.	
Nuke Watch 2	p. 31: "DOE shall define the use of screening levels and cleanup levels at a site…" This again indicates that DOE is in the driver's seat. It is acceptable that DOE proposes "screening levels and cleanup levels at a site," but it must be made explicitly clear that NMED has final decision-making authority.	No change.
Nuke Watch 2	p. 33: "If attainment of established cleanup objectives is demonstrated to be technically infeasible, DOE may perform risk-based alternative cleanup objectives…" This is a giant loophole that needs to be closed. The criteria for technically infeasible must strictly defined so that DOE doesn't get an easy out. Also estimated cost should not be a factor in determining technical feasibility (see immediately below).	No change.
Nuke Watch 2	P. 34: "For all other instances in which DOE seeks to vary from a cleanup objective identified above, DOE shall submit a demonstration to NMED that achievement of the cleanup objective is impracticable. In making such demonstration, DOE may consider such things as technical difficulty or physical impracticability of the project, the	No change.

	effectiveness of proposed solutions, the cost of the project, hazards to workers or to the public, and any other basis that may support a finding of impracticability at a particular SWMU(s) and/or AOC(s)." The new Consent Order should be delinked from costs. In our view, DOE lowballs projects when it wants to do them (for example, the Chemistry and Metallurgy Research Replacement Project at LANL, the Uranium Processing Facility at the Y-12 Plant, the National Ignition Facility at the Livermore Lab, the failed MOX Fuel Fabrication Facility at the Savannah River Site, etc., etc.). But DOE highballs projects that it doesn't want to do, such as cleanup of the Lab's biggest radioactive and hazardous waste dump, Area G. In short, LANL estimated full exhumation and cleanup of Area G would cost $29 billion, a clearly impossible cost. But our own cost comparison based on hard costs from cleaning up MDAs B and C is $6-7 billion, which would still provide hundreds of high paying jobs for New Mexicans. (See our cost comparison at Appendix C.)	
Nuke Watch 2	**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 would be allowed to demonstrate to NMED that any particular "cleanup objective is impracticable." The criteria for DOE 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 can then propose alternative cleanup methods using site-specific risk assessments. All of the decision-making could take place behind	No change.

	closed doors, as there are no public participation requirements in this section. NMED must specify what cleanup levels will be used and when and where they will be applied	
WM	Page 30, Section IX.A. I suggest adding to the end of the sentence that makes up this paragraph the following phrase: "based on current and reasonable foreseeable land use".	Yes – Section IX.A
WM	Page 31, Section IX.C. I suggest adding a sentence to the end of the paragraph to clarify that NMED must approve in work plans, reports, or other documents, the screening and cleanup levels defined by the Respondent.	No change.
WM	Page 31, Section IX.D. The sentence "NMED also reviews and accepts Respondent' s recreational SSLs" should be revised to indicate that Respondent may propose, as appropriate, their recreational SSLs for NMED approval. NMED may currently accept Respondent's recreational SSLs, but Respondent's SSLs could be revised in the future to something that is unacceptable, or new information may arise that indicates that NMED should no longer support use of Respondent's recreational SSLs. Also, it is not necessary to include a phrase that "NMED also reviews" Respondent's recreational SSLs. Such review is obvious.	No change.
WM	Page 31, Section IX.D, last sentence. I suggest adding the phrase to the end of sentence that states "or follow the procedures to calculate a site-specific risk-based soil cleanup level as specified in the following paragraph".	No change.
WM	Page 32, Section IX.F, next to last sentence. With regard to a current and reasonable foreseeable source of drinking water, I am not aware of any groundwater at LANL that has been deemed unsuitable as a water supply. In New Mexico, all (natural) groundwater that contains less than 10,000 mg/l of total dissolved solids is fully protected. So I see no need to include a phrase in the subject sentence about whether groundwater is a suitable water supply.	No change.
WM	Pages 32 and 33, Section IX.F. Normally one also screens groundwater sampling results using New Mexico Water Quality	No change.

	Control Commission (WQCC) standards and EPA Maximum Contaminant Levels (MCLs) for those parameters where such standards and MCLs exist. I suggest adding such a requirement, as these are enforceable concentrations.	
WM	Page 32, Section IX.G, third sentence. See Comment 32 with regard to a current and reasonable foreseeable source of drinking water. I suggest deleting the phrase "and when using them is protective of current and reasonably expected exposures" as it seems unnecessary given the circumstances at LANL. Also, just because groundwater is not being consumed now, or that there is no expectation that the water will be consumed in the near future, does not mean that it loses its protection.	No change.
WM	Page 33, Section IX.J, first sentence. I suggest adding to the end of the first sentence the phrase ", provided the LANL ESLs are approved by the NMED as they may be updated".	No change.
WM	Page 33, Section IX.J, third sentence. I suggest adding to the end of the first sentence the phrase indicating a compound sentence "; the screening level shall be subject to approval by the NMED".	No change.
WM	Page 33, Section IX.K, first sentence. I suggest adding to the end of the sentence the phrase "subject to NMED approval".	No change.
WM	Page 33, Section IX.K, second sentence. I suggest adding to the sentence after the phrase LANL ESLs the phrase ", as approved by the NMED".	No change.
WM	Page 33, Section IX.L. A sentence following the first sentence should be added to clarify that a proposal to establish alternate cleanup standards for groundwater that involves a WQCC groundwater standard must be approved by the WQCC before NMED can accept the alternate standard (20.6.2.4103.E and F NMAC).	No change.
CCNS	**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.	No change.

	We note CCNS's recent comments about the flawed ecorisk documents DOE and LANS submitted to NMED. Our questions required NMED to go back and request additional information from DOE and LANS, resulting in a more protective change to the ecorisk assessment. 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. NMED must specify the applicable cleanup levels that will be used and when and where they will be applied.	
MH	**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.	No change.
MH	NMED must specify the applicable cleanup levels that will be used and when and where they will be applied. The New Mexico Environment	No change.

	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.	
CH2M	Application of drinking water standards at the aquifer may not be realistic, especially if land use parameters would result in lower than a residential exposure with a drinking water rate commensurate with residential intake. Recommend use of a realistic risk-based exposure model and associated cleanup level.	No change.
Santa Clara	Finally, it is important for the Revised Draft LANL Consent Order to be further revised to incorporate a more explicit process whereby government-to-government consultation will occur before approval of any screening levels and clean-up levels at a site. The document as currently drafted states at page 31 that the DOE shall define the use of screening levels and cleanup levels at a site" and that DOE must use *NMED's Risk Assessment Guidance for Site Investigations and Remediation* (July 2015)(nNMED Risk Guidance") to determine whether or not a site meets acceptable risk. The NMED Risk Guidance clearly allows for Tribal exposure scenarios to be factored into a site. *See* NMED Risk Guidance at 3 (""If other land uses and exposure scenarios are determined to be more appropriate for a site (e.g., home gardening, recreational land use, hunting, and/or Native American land use), the exposure pathways addressed in this document should be modified or augmented accordingly or a site-specific risk assessment should be conducted."). Yet, there doesn't appear to be any government-to-government consultation pathway in the Revised Draft LANL Consent Order to ensure that occurs. This needs to be corrected in the document. Furthermore, this request is in keeping with DOE Order 144.1 (http://energy.gov/em/downloads/doe-order-1441-department-energy-american-indian-tribal- government), which incorporates the DOE Indian Policy. This Policy recognizes the need to protect trust	No change.

	resources both in and outside of reservation boundaries (including aboriginal territories), affirms that DOE will promote cooperation with state agencies on matters affecting tribes, and seeks to "ensure integration of Indian Nations into decision-making processes." Because the Revised Draft LANL Consent Order specifies at page 31 that "[t]he need for cleanup is triggered by potential unacceptable risk and not by exceedance of screening levels," it is essential that risks to the Pueblos surrounding LANL be calculated, or that there be an acknowledgment that, in the absence of Tribal exposure scenarios, a more protective *(i.e.,* conservative) screening level (such as lE-7 and HI=O.l or 0.01) should apply. It is appropriate to employ such a conservative assumption in the absence of a developed Tribal exposure scenario because the Pueblos' uses of the land and resources are far more intense than, for instance, a recreational user and therefore NMED's regular target risk levels should not necessarily be the default for every site-specific clean-up plan. [4] Given the frequency and intensity and breadth of uses of resources, and the deep connection that the Pueblos surrounding LANL have to that entire area, it is critically important that government-to-government consultation on clean-up levels and screening levels is made explicit in a new Consent Order and that proper timeframes for such consultation are factored into the document. Clean-up of the Pajarito Plateau to levels that are protective of the general public but are not protective of traditional Pueblo uses would preclude Santa Clara Pueblo's safe use of the area. We ask that the document be corrected to incorporate our request so that NMED does not somehow inadvertently condone or unwittingly institutionalize that sort of potential racial discrimination into the document.	
San I	Section IX.D. discusses NMED's soil screening levels (SSLs) which are based on "conservative exposure assumptions for several exposure scenarios (e.g., residential, industrial, and construction worker)" and then also "accepts DOE's recreational SSLs." How is the SSL determined for a particular cleanup site? Is it based on the amount of anticipated human exposure for that particular site after the cleanup activity? The Pueblo has a concern about a SSL	No change.

	being determined for a particular area on the LANL property based on anticipated exposure on the LANL side of the boundary when the anticipated human exposure on the Pueblo side of the boundary may be different. For example, the SSL for a site on LANL may be different because of how the LANL site is used and there may be little to no human exposure because few people would be in that LANL restricted area. However, just on the other side of the fence, the Pueblo may use a particular area for traditional or cultural uses and have a higher exposure. Would such a scenario be taken into consideration when establishing a particular SSL for a site that borders or is close to the Pueblo?	
San I	Section IX.G. states that "groundwater cleanup levels to be based on the maximum beneficial use of the groundwater to ensure the protection of human health. For protection of human health and the environment, groundwater cleanup levels shall be based on existing standards (e.g. drinking water standards) when they are available and when using them is protective of current and reasonably expected exposures." What contingencies are in place to address the possibility of the promulgation of Tribal Water Quality Standards by the Pueblo? The Pueblo has been working toward this goal for several years, and now the U.S. Environmental Protection Agency (EPA) is preparing for tribal consultation on an Advance Notice of Proposed Rulemaking to establish baseline water quality standards on Indian reservations currently lacking water quality standards. EPA's time frame is June to August 2016. Under either path, Tribal Water Quality Standards could have a profound effect on the work outlined in the DCO. Please describe how NMED will respond to this possible development, particularly as it relates to the Groundwater Monitoring provisions in Section XII.	No change.
San I	Under Section IX.M, DOE can seek to vary a cleanup objective on the basis that it is impractical. DOE can base such impracticality of a cleanup project on such things such as technical difficulty, physical impracticality, effectiveness of the proposed solutions, project cost, hazards to workers or the public, and any other basis to support a finding of impracticality. The Pueblo requests notice if DOE submits a claim of impracticality for cleanup of a SWMU or AOC that will affect the Pueblo. We also request	No change.

	notice if NMED approves a DOE impracticality demonstration.	
• **Newly Discovered Releases – Section X**		
EPA	Newly Discovered Releases (page 35): The Consent Order specifically addresses "newly discovered SWMUs and AOCs" and indicates they will be added to the Consent Order. It is not clear if this section also intended to address newly discovered releases from existing SWMUs and AOCs.	No change.
WM	Page 35, Section X.C.1-3. The provisions described in this Section is inadequate because it lacks sufficient detail. For a newly discovered SWMU or AOC or release, the process should be modified to require Respondent to provide NMED a report describing the history of the site (as well as it is known), activities performed to screen the site, as well as present the analytical data and supporting quality control data (in other words, the report should contain the information expected for an Investigation (RFI) Report). Only by reviewing all such information can NMED make a determination that a SWMU or AOC should be added or not added to Appendix A. If Respondent cleans up the site, it should be required to also provide verification sampling results and sample locations in support of the remedial effort. Be aware that screening such sites is essentially the equivalent of a SWMU assessment, and generally, SWMU assessments are inadequate to approve a SWMU (or AOC) for Corrective Action Complete Status, often due to insufficient sampling and analysis.	No change.
• **Deferred Sites – Section XI**		
EPA	Suggested adding language to clarify that NMED would still have the authority to issue an emergency order if there were an imminent and substantial endangerment at a deferred site.	No change. Included in Section XXXIV (Covenant Not to Sue/Reservation of Rights)
• **Groundwater Monitoring- XII**		
EPA	Groundwater Monitoring (page 38): Suggest clarifying the language to indicate that if long-term monitoring is required by NMED, such a request shall (not "may") be included in a permit modification request, consistent with section V II.A.3.	No change.
EPA	Groundwater Monitoring (page 39): Per section VII.A.3, it seems that this requirement is unequivocal and a permit modification is necessary. Suggest using the word "shall" or "must" instead of the word "may".	Yes - XII.F

WM	Pages 38 and 39, Section XII.E, first sentence; and Section XII.F., first and second sentence. The language should be strengthened to indicate that Respondent **shall** include (not *may* include or *may* implement) in the Permit or Permit modification request groundwater monitoring requirements that have not been completed under the Consent Order. Bear in mind that long-term groundwater monitoring may be needed after a site is granted corrective action complete status. Respondent should be compelled to commit to monitoring. The language in the proposed Consent Order as written makes such monitoring merely a suggestion.	Yes - XII.F
• **Facility Investigation – Section XIII**		
EPA	Suggested that language be added to Section XIII.E and a table be added to the document that lists the work plans already approved by NMED under the 2005 CO.	No change.
SN3	NMED may also consider providing for notice of a delay, for example an activity is projected to start so notice is given, but then a delay occurs. I would hope the DAMs would have sufficiently open dialogue that this would naturally occur, but may be worth an explicit statement in this paragraph.	No change.
WM	Page 40, Section XIII.C., second sentence. Each RFI work plan should also contain a schedule that can be approved by the NMED. The schedule should indicate what activities will be accomplished within some specific date or time frame, including submittal of the RFI Report.	Yes – Section XIII.C
SN3	Consider adding the following clarifying sentence: "The request for extension is a related but separate action from the written notification of change."	No change.
KD	XIII Facility Investigation, part D. The Draft CA states that “if during investigation, DOE determines that changes to approach or work scope detailed in the work plan are needed to meet the investigation objectives, DOE shall notify NMED in writing. However, the Draft CA does not allow for review and approval of such changes. Changes in approach and/or scope should be reviewed, commented, and approved by NMED prior to implementation.	No change.

KL	Strongly support using EPA's results based guidance and adding DQO's as a requirement.	No change.
KL	Strongly support language about NMED's RFI approval addressing corrective action complete when appropriate.	No change.
• **Areas of Contamination - XIV**		
EPA	Areas of Contamination (page 41): If not added to the definition in Section Ill, consider citing applicable EPA policy and/or guidance relating to the use of Areas of Contamination.	Yes – Section XIV.A
SN3	Use of Area of Contamination is an excellent provision which provides for efficient and logical support of cleanup logistics.	No change.
WM	Page 41, Section XIV. There is EPA guidance on what can and cannot be legally done at Areas of Contamination. One is not granted blanket approval for doing anything desired at an Area of Contamination with regard to the management and treatment of hazardous waste and media containing hazardous waste. I recommend that this Section reference EPA guidance and that a statement be added that indicates that the management and treatment of hazardous waste and media containing hazardous waste must be consistent with EPA guidance and must meet all applicable hazardous waste management regulations.	Yes – Section XIV.A
• **Interim Measures/Emergency Interim Measures - XV**		
EPA	Interim Measures/Emergency Interim Measures (page 42): In the case of an emergency interim measure, consider also requiring LANL to notify NMED by phone (to the appropriate NMED contact person or the DAM)	Yes – Section XV.E
WM	Page 42, Section XV.C. The language needs to be strengthened. Respondent should be required to provide meaningful schedules that they commit to, not "estimated" schedules. If a schedule will not be met because of conditions beyond their control, Respondent can ask for, and NMED can grant, an appropriate time extension.	No change.
WM	45. Page 42, Section XV.D. Revise to indicate a time frame by when the Respondent must provide the Interim Measures Report to the NMED.	No change.
CH2M	Please provide clarification on how the costs associated with interim/emergency actions would impact the overall campaign	No change.

	schedule. For example, if a series of interim actions would both reduce risk and save overall cost, would NMED allow flexibility in the deliverable and milestone schedule to allow this more prudent approach?	
San I	The DCO at X.E, provides a process for notification and implementation emergency interim measures necessary to address an immediate threat of harm to human health or the environment. How will the Pueblo and the public be notified of such an emergency situation?	No change.
• **Corrective Measures Evaluation – Section XVI**		
SN3	Great to call-out published EPA Guidance for these decision criteria.	No change.
SN3	Good that this provision to acknowledge work under the 2005 Consent Order was included, even though it might seem obvious. Avoids future confusion, especially with the public stakeholders.	No change.
LA Co.	The County supports the use of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA, 42 U.S.C. §9601, et seq.) nine (9) remedy selection criteria ("CERCLA Criteria") for the selection of the remedy to be implemented even though the Order's jurisdictional predicate is the State's statutory authority (New Mexico's Solid Waste Law, Sections 74- 4-10, 74-9-36(0), and 74-9-34) and pursuant to the delegated authority of the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.). Application of these criteria assure that all relevant matters affecting human health and the environment are considered in the decision-making process, thereby precluding selection of the least expensive remedy at the expense of other factors and including the community acceptance criterion of the CERCLA Criteria.	No change.
WM	Page 45, Section XVI.D.5, last sentence. Suggest revising the sentence to read: "Other criteria being equal, Respondent may give preference to a remedy that is less costly, provided the remedy adequately protects human health and the environment in consideration of current and reasonably foreseeable use of the land." Respondent should have the opportunity to cleanup a site to the lowest contaminant concentrations if they desire to, even if its costs more. In cases where the cost difference is not large, Respondents would be wise to cleanup contamination at the site to lower concentrations. The rest of the suggested revision is meant	No change.

	to clarify the phrase "does not sacrifice protection of human health and the environment".	
WM	Page 45, Section XVI.E, second sentence. For clarity, I suggest revising to state "...NMED shall review the CME Reports and shall prepare and issue Statements of Basis...". Better yet, because NMED review of CME Reports is obvious, revise: "...NMED shall prepare and issue Statements of Basis for CME Reports...".	No change.
CH2M	Recommend development of criteria in DQO that establishes the need for a CME and uses the collaborative meeting approach to make a joint determination as a first course, in order to take into account the responsibility for balancing the radiological risk and cleanup along with the chemical corrective action. For example, Paragraph D.3 shows where additional consideration should be given to the risks to workers associated with the radionuclides. An approach for the chemical contaminants may not pose significant risk to workers, but radionuclides may change the short-term risk condition. The balancing of these risks should be accounted for in the decision process.	No change.
• **Statement of Basis/Selection of Remedies – Section XVII**		
WM	Page 46, Section XVII.A, third sentence. The word "relevant" is not needed in this sentence as it should be obvious which CME Report is being used to select a remedy. However, the entire paragraph is inadequate and should be revised, as NMED should not be required to select any remedy presented in a CME Report if none of the remedies is appropriate. NMED should retain its right to require a CME be revised to include all appropriate remedies in the evaluation process.	No change.
CH2M	A more collaborative decision process would result in an optimized corrective action process, allowing for use of the industry expertise employed by the DOE to provide additional resources and scientifically based corrective action response to potential public input.	No change.
• **Accelerated Corrective Action and Presumptive Remedy – Section XIX**		
EPA	Accelerated Corrective Action and Presumptive Remedies (page 48): DOE should be required to notify NMED that they plan to undertake accelerated corrective action.	Yes – Section XIX.B and C

EPA	If not added to the definitions (Section Ill), presumptive remedy should be defined and citations to applicable policy/guidance provided.	No change. Added to Section III - Definitions
EPA	Clarify what is meant by "most bounding alternative." The EPA understands this to be the most conservative remedy (e.g. excavation and disposal); however, the Consent Order presently lacks clarity on this matter.	Yes – Section III.EE
EPA	NMED must ensure the CME/remedy selection process is not inappropriately bypassed. If the presumptive remedy is intended to be the final remedy for a site, the scope of the CME (or Remedy Implementation Plan) can be significantly streamlined; however, it does not obviate the need for the regulatory agency to follow the process articulated in Section XVII.	No change.
EPA	Although NMED may choose not to require prior approval, DOE should at least notify NMED that a presumptive remedy is being undertaken.	No change.
KL	Strongly support adding sites with contaminated groundwater and cleanups longer than 180 days to accelerated corrective action.	No change.
KL	Strongly support the use of presumptive remedies, where appropriate.	No change.
WM	Page 48, Section XIX.C. This Section (and reference to the process described in this Section elsewhere in the proposed Consent Order) should be deleted, as it completely defeats the purpose to submit the normally-required work plans for NMED to approve in advance what is to be done. It places to much trust in the hands of the Respondent to do what is right (NMED can trust, but it must verify to appropriately accomplish its mission). It is rare that a work plan is approved by NMED without some revision. Furthermore, although rare, inappropriate corrective actions can cause more harm than good; if NMED does not get to review the plan prior to implementation, then NMED will not be able to prevent or reduce the harm. Other adverse things can happen -- I've experience a case where corrective action activities were done that were not actually completed within the boundaries of the SWMU -- wasting effort, time, and tax payers dollars; the NMED had information on the actual location of the SWMU and could have pointed out to the responsible party their error before the error was made (this is also another example where past EPA oversight led to mistakes. EPA had lead oversight responsibility at the time).	No change.

	NMED review of work plans is of paramount importance. Before approving a work plan, NMED technical staff usually conduct field visits to the sites under investigation. I can recall many instances where I personally saw on field visits that additional work was needed to adequately investigate or clean up a site.	
WM	Page 48. Section XIX.E. This Section should be revised to indicate that Respondent may propose presumptive remedies, but NMED makes the decision whether a CME must be conducted. This is the normal process; a process that has worked well for many years as evident in the corrective actions completed at Sandia National Laboratories, Kirtland Air Force Base, Holloman Air Force Base, and many other facilities in New Mexico.	No change.
WM	Page 49, Section XIX.E.1. The phrase "most bounding alternative" should be clarified as it is not used in common practice (and I don't know what it means). Furthermore, rather than trying to define what a presumptive remedy is based on a type of remedy, it would be better in this Section to set forth when it is appropriate to use presumptive remedies. It is appropriate to use presumptive remedies when the remedy completely removes contamination (may be based on risk considering current and foreseeable land use), is simple and efficient to implement, does not cause unacceptable risk to human health or the environment while being implemented, and does not involve cleanup of groundwater.	Yes – Section III.EE
• **At Risk Work – Section XX**		
SN3	This is a good provision to allow DOE work In advance of formal approval, but At Risk Work should never occur without notice to NMED. Recommend adding the following sentence: "The DOE shall provide notice to NMED by approved means no less than five work days before the start of any At Risk Work."	No change. 15-day notification already required.
EPA	While seemingly obvious, describe/define "at risk work" and explain the potential consequences of DOE proceeding at risk.	Yes – Section XX
WM	Page 49. Section XX. This Section is inappropriate and should be deleted. See my Comment 49 concerning the importance of NMED review of work plans.	No change.
• **Certification of Completion of Corrective Action – Section XXI**		

EPA	The EPA understands that the DOE desires formal recognition from NMED that corrective action is complete and NMED will issue acknowledgements, as appropriate. However, the EPA considers the permit to be the appropriate-mechanism where this determination can officially be made (through modifying the tables in permit Attachment K), requiring a class 3 permit modification and consideration of public input. Clarify the language in this section to be consistent with the required process.	Yes – Section XXI.A
EPA	Modification or removal of institutional and/or physical controls from a previously granted certificate of completion is a change in remedy and will eventually require a class 3 permit modification.	No change.
SN3	DOE-EM discovered at Closure Sites and other active sites that post-cleanup and post-closure monitoring is a high interest item for the public. Future decisions at LANL will determine whether these stewardship responsibilities would be done by DOE-EM, turned over to the DOE Office of Legacy Management, or given back to the NNSA M&O. Recommend that NMED consider inclusion of a general expectation of a follow-on agreement to regulate and administer a post-legacy cleanup LANL. The Rocky Flats Legacy Management Agreement (available at this link http://www.lm.doe.gov/Rocky_Flats/Regulations.aspx) is one example of such an agreement. The Statement of Purpose on page 4 would provide the right level of key elements to include in this Draft Consent Order to point toward a follow-on agreement.	No change.
KL	Strongly support the proposed approach for addressing non-site related contaminants.	No change.
WM	Page 51. Section XXI.G. Unbelievable!!! This Section should be deleted because the provisions are **not protective** of human health and the environment. If contamination poses unacceptable risk, no matter its source, such site should not be granted corrective action complete status. The Respondent should be required to clean up the land to an acceptable level of risk for the intended current and foreseeable land use. The Respondent has the right to sue for relief the other land owner that is the source for such contamination.	No change.
WM	Page 51. Section XXI.G. Although the entire Section should be deleted as mentioned in the previous comment, the phrase "Contaminants from	No change.

	anthropogenic sources" should be changed to read "Contaminants from off-Facility sources" or something similar for clarity. In environmental cleanups, all contaminants at levels exceeding natural background concentrations are presumed to originate from human activities.	
• **Designated Agency Managers (DAMs) – Section XXII**		
SN3	Prompt and open communication will become stifled without continuous involvement of a DAM-like individual from the Contractor. While clearly the formal communication is between DOE and NMED, a frequent and active informal communication role with the Contractor lead should be expected. See comment 5 above.	No change.
SN3	Focus on communication between DAMs is good, but also a good practice to schedule a routine status brief to Tier 1 and Tier 2 on some periodic basis. Suggest quarterly for Tier 1 and semi-annual for Tier 2.	No change.
SN3	Recommend DAM meeting no less than bi-monthly.	No change.
• **Preparation/Review/Comment on Documents – Section XXIII**		
SN3	Pre-submission review is a great idea for collaboration and communication.	No change.
SN3	Target schedules should be maximums except for unique submissions. Bias for action argues for shorter schedules on both sides. Meeting the submission and review schedules will be one of the most difficult challenges, but is also critical to success of the Consent Order.	No change.
SN3	Important to provide means for staff to elevate for management attention so that a single minor issue or two aren't responsible for delaying an otherwise acceptable document.	No change.
SN3	I understand why DOE would want to retain authority to resubmit a disapproved document without a meeting, but it would generally be a bad idea. Sending documents back and forth between agencies without discussion is counter to a collaborative bias for action, and appears to an outsider as a continuation of past practices.	No change.
SN3	Inclusion of new work into the future work plan will be tricky as budgets will almost certainly continue to be less than desired by both parties. Suggest modification of (1) to conclude: "…into future work	No change.

	plan during the annual planning cycle...".	
KD	XXIII Preparation/Review/Comment on the Documents part E. The Draft CA allows for an informal review and comment process allowing for an informal discussion of documents prior to submittal for official review by NMED. It is not clear, but it appears that NMED will not be provided a full document for review but rather will only be allowed to discuss issues; at a minimum, a Draft Final document must be submitted to facilitate the review process. Further, the language of the Draft CA appears to allow DOE flexibility on whether they chose to address the State's concerns/comments. This process, as currently written, is limiting the State on its legal authority to review and comment on documents and require modification for either technical content or regulatory compliance. Once DOE submits the document, NMED may only approve the document as submitted; approve the document with modifications; or, disapprove the document. It is not clear how this process allows the State full review capability of the documents (other than through disapproval). Further, the informal review process does not allow for clear documentation of State concerns and DOE responses. This lack of transparency is concerning, as it is unclear how the review process will be documented for the public record. Further, this informal process appears to favor the facility, limiting the NMED's legal right to review and comment on submitted documents.	No change.
KL	Strongly support review schedules for NMED.	No change.
KL	Strongly support proposed language about approvals with modifications.	No change.
KL	Strongly support proposed language about limiting disapprovals to the document at hand.	No change.
KL	Strongly support proposed language regarding the resolution of disapprovals. I think this will help keep work moving.	No change.
KL	Strongly support proposed language regarding NMED comments that affect future submissions. As you know trying to track these was a nightmare for both LANL and NMED. In addition this language would stop the type of comments that merely reflected a staff person's personal views (i.e.: not intended to improve quality or efficiency).	No change.
WM	Page 54, Section XXIII.D, last sentence. Again, unbelievable!!! This	No change.

	sentence should be deleted as the provision is **not protective** of human health and the environment. In all the years I worked at NMED, it was well known that NMED did not have and currently does not have sufficient resources, especially staff, to oversee LANL. This would be especially true should LANL actually accelerate much of its corrective action activities.	
WM	Page 55, Section XXIII.F.3, second sentence. The phrase "and shall not apply to other documents" should be deleted. If a deficiency is identified in a document, that should not always mean that NMED cannot identify the same deficiency in other or future documents, and take appropriate actions.	No change.
CH2M	The schedules in Appendix D seem excessive given the described pre-submission approach in this paragraph. For example, the review/revision process for CME is 430 days, well over a year without a request for extension. We would recommend a shorter schedule for both review and revision to support better planning, allowing the parties to evaluate specific documents on an as-needed basis for longer review/revise cycles.	No change.
• **Dispute Resolution – Section XXV**		
SN3	The general bias for action and open communication is evident throughout this Draft Consent Order. It is good to focus first on informal resolution, but this will be one of the most difficult areas requiring change in personal behavior patterns and trust-building on both sides. The Rocky Flats cleanup effort took on this behavior change by defining a "Consultative Process" and placing it within the Tri-Party Agreement. The most relevant text on the Consultative Process is included at Attachment 1. Also, an Appendix 2, Principles for Effective Dialogue and Communication at Rocky Flats, is included here as Attachment 2. Strongly recommend NMED consider including language from these examples to help facilitate the behavior changes which this Draft Consent Order will require.	No change.
SN3	Agency disputes are typically of very high interest to the stakeholders. Recommend some acknowledgement of how disputes will be communicated to stakeholders be included.	No change.
KL	Support new dispute resolution language and strongly support	No change.

	keeping dispute resolution in the CO.	
WM	Page 59, Section XXV.E, first sentence. Language should be added that the NMED will pay for and choose the mediator to ensure integrity of the process, should unbinding mediation be used.	No change.
• **Quality Assurance/Data Management/Data Review – Section XXVI**		
EPA	The requirements of these sections should be consistent with permit section 11.3.1.1.While presently very similar, inconsistencies should be addressed in a future permit modification.	No change.
EPA	NMED tap water screening levels also seem relevant and should be included. This comment may also apply to XXVI.D.5.	Yes – Section XXVI.D.3
• **Access/Data/Document Availability – Section XXVII**		
SN3	The last sentence in this paragraph appears to be inconsistent, or at least unclear, with the requirement for a minimum 15 day notice in the first sentence.	Yes – Section XXVII.B
WM	Page 62, Section XXVII.E, last sentence. Again, unbelievable!!! This sentence should be deleted as the provision is **not protective** of human health and the environment. Furthermore, the provision does not meet the regulatory requirement at 40 CFR 264.101 (c). While the NMED has the discretion to demand or not demand stipulated penalties, the Respondent under the above cited regulation is not relieved from its responsibility to cleanup a site subject to the described conditions.	No change.
• **Extensions – Section XVIII**		
CV	In addition to eliminating most of the cleanup deadlines in the draft order would substantially weaken the enforceability of the few deadlines that would remain for annual negotiation. It would do so primarily in two provisions. The first of these provisions is section XXVIII of the draft consent order, which allows DOE and LANS to request extensions of time on deadlines in the schedule. Such a provision is appropriate; the 2005 Consent Order has somewhat similar provision, in section III.J.2. The draft consent order provision properly would require DOE and LANS to make a showing of good cause before the Environment Department would grant an extension (as does the 2005 provision). A showing of good cause should be made on a case-by-	No change.

	case basis, depending on the circumstances that give rise to the extension request. But the draft consent order would change this approach. It contains a laundry list of "examples" of good cause that presumably – and DOE would no doubt argue – would automatically constitute good cause, regardless of the circumstances. Thus, for example, one item on the list is "unanticipated breakage or accident to machinery, equipment, or lines of pipe." Under some circumstances, such an accident might constitute good cause. If, however, DOE or its contractor had negligently failed to properly maintain the machinery or pipeline, it would not be good cause.	
WM	Page 64, Section XXVIII.D, last sentence. This Section should be revised to indicate that NMED may transmit its decision by phone call or email, to be followed up within 30 days with written correspondence.	No change.
WM	Page 66, Section XXXIII, second sentence. This is a significant difference between the original and proposed Consent Orders, and eliminates public participation with respect to modification of the Consent Order. See also Comment 67.	No change.
Santa Clara	In addition, we request that NMED revise some of its automatic consent clauses in the Revised Draft LANL Consent Order and add a phrase allowing NMED to demonstrate good cause for needing additional time. Emergencies can happen and we do not want the clean-up of LANL to be jeopardized because of a bureaucratic automatic consent clause in the document. One example where some sort of emergency out clause for NMED would be advisable is at page 54 of the Revised Draft LANL Consent Order wherein it states that "[i]f NMED action on a DOE submission is not completed in accordance with an agreed-upon review schedule, the submittal will be deemed approved." Another example can be found on page 64 wherein it describes that NMED has to respond within fifteen business days of receipt of a written request for an extension of a "milestone" in Appendix B and if NMED fails to do so, an automatic extension of time will be granted to DOE to complete a "milestone" that would otherwise have been subject to stipulated penalties if not achieved. Allowing automatic extensions of "milestones," in addition to extending milestones without any public input or review, is extremely ill-advised, and only heightens our concern about the lack of	No change.

	meaningful enforcement mechanisms in this newly- structured version of the Consent Order.	
• **Funding – Section XXX**		
SN3	I can understand why the State needs to make this reservation related to funding, however any adjustment in review times must also provide affirmative notice to the DOE as part of open and transparent communications. Recommend a statement be added requiring NMED to provide notice to DOE regarding any adjustments to review times or other schedule adjustments.	No change.
PR	More funding must be dedicated to cleanup and the LANL must request congress appropriate the necessary funds for genuine cleanup.	No change.
• **Force Majeure – Section XXXII**		
LA Co.	The force majeure clause is too broad and permits DOE to avoid the consequences of its own failure to move forward with contracting and perforn1ance obligations. For example, if DOE delays compliance with the Order which delay is caused by "... compliance with applicable statutes or regulations governing contracting, procurement, or acquisition procedures despite the exercise of reasonable diligence," DOE is excused from the delay. This implies that if the United States cannot implement a contracting or procurement action because it is not following the requirements established by law, DOE's failure to meet legal requirements constitutes an excusable delay in compliance with the Order. A self-inflicted delay should not constitute an excusable delay. Even with the language of "exercise of reasonable diligence," this overly broad and objectionable. We suggest that the Order replace "despite the exercise of reasonable diligence" with "to the extent that is beyond the control of the United States government" We do appreciate the clause that states "Provided NMED agrees with the justification for the length of the delay, NMED shall grant an extension pursuant to Section XXVIII (Extensions)." This should allow the parties to negotiate a claim and its justification.	No change.
CV	The second provision is the force majeure provision in section XXXII of the draft consent order. It contains a standard definition of force majeure as any event arising from causes beyond the control of DOE	No change.

	or its respective agents, contractors, or employees that causes a delay in or prevents the performance of any obligations of DOE under the consent order. And it includes a list of examples of force majeure. The 2005 Consent Order contained a similar force majeure provision in section III.H. But, unlike the 2005 Consent Order, the draft consent order does not specify that an example on the list is a force majeure only if it meets the definition of force majeure. Thus, as with the deadline extension provision, an item on the list is presumably (and arguably) a force majeure regardless of the circumstances. These two provisions will make it more difficult to enforce the consent order should it be adopted. Yet there is no justification for the Environment Department to agree to weaken these important provisions.	
• **Covenant Not To Sue/Reservation of Rights – Section XXXIV**		
AG	Recommended changing "State" to "NMED" throughout Section XXXIV.	Yes – Section XXXIV
CV	Further, the covenant not to sue in the draft consent order is given "in consideration for the actions that will be performed by DOE under the terms of this Consent Order." The "consideration" that the Environment Department – and indeed, the State of New Mexico – would get under this draft consent order is much less than the consideration that the Environment Department and the State got under the 2005 Consent Order. The 2005 Consent Order, as discussed above, required DOE and its contractor to implement corrective action, according to a definite and specified schedule, to completion. The draft consent order would provide merely that a schedule will be negotiated at some points in the future. Yet, again, the Attorney General is not given the opportunity to approve or disapprove this deal. The Attorney General needs to be consulted on the draft consent order and given the opportunity to approve – or, we would hope, disapprove – the document as drafted.	No change.
WM	Page 67, Section XXXIV.A, last sentence. I question whether	No change.

	the covenant not to sue should survive after the Consent Order terminates. What, for example, will happen if new information arises that indicates that a site cleaned up or investigated under the Consent Order has not been cleaned up to levels protective of human health or the environment, and the Respondent refuses to take additional corrective actions? Does the covenant not to sue limit the enforcement options for the NMED?	
• **Stipulated Penalties – Section XXXV**		
EPA	Will NMED consider potential DOE proposals to perform Supplemental Environmental Projects (SEPs) in lieu of stipulated penalties? If so, suggest identifying this possibility. The March 10, 2015 Memo from EPA Assistant Administrator Cynthia Giles regarding the 2015 Update to the EPA Supplemental Environmental Projects Policy represents EPA's most recent update on SEPs.	Yes – Section XXXV.A.8
EPA	Are technically deficient documents subject to stipulated penalties?	No change.
WM	Page 69, Section XXXV.A.5, last sentence. This provision, albeit present in the original Consent Order, is inconsistent with other enforcement policy. It essentially provides that noncompliance with the Consent Order for enforceable milestones will not be punished until such time it is discovered by the NMED, and only for the time since it was discovered and noticed. While this reduces monetary penalties for Respondent, I see no benefit to New Mexico. It weakens enforcement and should be deleted.	No change.
WM	Page 70, Section XXXV.C, last sentence. NMED should not limit its enforcement capability, including the right to seek additional civil penalties, simply because a deadline (milestone) was missed, and the NMED received a payment for the missed deadline. For example, groundwater contamination can take decades to achieve final cleanup, and it could cost hundreds of millions of dollars (KAFB Bulk Fuels Spill for example). The Respondent could elect to pay the stipulated penalties for years on such a site to delay corrective action until such time Congress felt like funding them. Delete accordingly.	No change.
Santa Clara	It also concerns us deeply that the only item that could be subject to stipulated penalties -- namely, whatever one-year "milestone" is set forth in an annual plan -- could be changed or the timeframe for completion extended without any public or government-to-	No change.

	government input or review.	
San I	The Pueblo supports the use of stipulated damages if annual milestones are not met as a way to keep the emphasis on continued, timely and actual cleanup activities. The Pueblo has a serious concern about payment of stipulated penalties as described in Section XXXV.A.6). Under that provision, stipulated payments are to be paid to the State and we assume that those funds will go to the State's general fund as there are no provisions that such funds will be turned back to NMED for use on working on a cleanup project identified in the DCO or used by NMED for the benefit of communities impacted by the LANL legacy wastes. The Pueblo strongly urges that any funds generated by stipulated penalties under the DCO be used by NMED to invest in environmentally beneficial projects in the impacted communities. The Pueblo is clearly an impacted community, if not the most impacted community, but yet is often overlooked when the State collects fines or penalties for permit or other violations by LANL and uses those funds elsewhere. In other words, the Pueblo can be impacted by the violation that generated the fines for the State but the Pueblo does not see any benefit from those fines. The Pueblo urges language be inserted into the DCO to allow funds from stipulated penalties to be retained by NMED and used for environmental projects either in the impacted community or that will directly benefit that community.	Yes – Section XXXV.A.7
Termination – Section XXXVII		
EPA	Is termination of the Consent Order subject to public notification?	No change.
WM	Page 71, Section XXXVII. A provision should be added to indicate that NMED acting unilaterally can terminate the Consent Order at any time for any reason, and replace it, as appropriate, with another consent order, or permit, or other enforceable document. Future NMED administrations should not have to suffer the burdensome requirements being set forth in the proposed Consent Order for the agency, or try to work around the unwarranted, and in some cases illegal, advantages to be surrendered to the Respondent. Even if the extensive defects of the proposed Consent Order are remedied in the final version, through experience, I can say that there have been situations where the NMED would not want to continue its regulatory oversight under an existing	No change.

	Order.	
Appendix A		
EPA	Approximately 28 SWMUs/AOCs are identified has being in a campaign called "other." No "other" campaign was identified in Appendices B or C. Clarify the campaign status of these sites.	Yes – Footnote of Appendix A Table
EPA	Six sites having a status of "RFI or Field Work Rpt Submitted to NMED" are not assigned to a campaign. Clarify the campaign status of these sites.	Yes – Appendix A
EPA	The Consent Order references SWMUs and AOCs where work plans are approved but not yet implemented (pages 40 and 48) and where documents are disapproved but not yet resubmitted (page 53). Consider modifying Appendix A to reflect the status for these sites.	No change.
WM	It is astonishing that there are 124 SWMUs/AOCs that are considered "Deferred Sites" at LANL. It is well known that the DOE and the Department of Defense are using the military munitions rules, and the fact that they alone can keep ranges open (active or inactive), as a means to delay cleanup of ranges. Sandia National Laboratories (SNL) has many SWMUs that are or were firing or detonation ranges. Only a handful of such SNL sites have been declared by SNL as operational (not closed). SNL does not want to be in the business of conducting corrective action for the long term, and accordingly dealt with their sites as expeditiously as possible. I believe they also dealt with their sites as soon as possible because it was the right thing to do. I commend SNL for this. However, I seriously question whether the future LANL missions are likely to be conducted at most or all of these 124 different sites. Perhaps NMED should question LANL management on this matter if the goal of the proposed Consent Order is to expedite clean up.	No change.
Appendix B		
SN3	Construct of the table is very good. It appears that while the body of the Draft Consent Order reflects a bias for cleanup action, the Appendix B table has a larger than expected number of paperwork actions (e.g., plans, reports, administrative actions). This may be a legitimate reflection of the LANL program status, or reflect a desire to 'clear the	No change.

	in-boxes' of older actions, but recommend NMED consider greater number of physical actions to align with the Draft Consent Order narrative.	
WM	Because targets and their associated deadlines are not enforceable, they could be deleted from the Appendix without reducing the enforceability of the Order. Such unnecessary information can be kept separate for later use by those involved with future modifications of the Consent Order.	No change.
WM	The Consent Order replaces the requirements normally included in a Hazardous Waste Permit. Thus, the basic provisions for corrective action that are normally found in a permit should be replicated in the proposed Consent Order. The regulation at 40 CFR Part 264.101(a) specifies that "The owner or operator...must institute corrective action as necessary...for **all** releases of hazardous wastes or constituents from any solid waste management unit at the facility..." (emphasis added). Furthermore, 40 CFR Part 264.101(b) states "Corrective action will be specified in the permit...The **permit will contain schedules** of compliance for such corrective action..." (emphasis added). A hazardous waste permit when first created is subject to public review and comment as a draft. An incomplete permit cannot be reviewed by the public -- what does not exist cannot be reviewed. The proposed Consent Order is subject to public review as a draft in a manner similar to a Class 3 permit modification request as required under the existing Consent Order at Sections III.J.1 and III.W.5, 40 CFR 270.42(d)(2)(iii), and C.8.a of Appendix I of 40 CFR 270.42. The proposed Consent Order is incomplete as it fails to provide enforceable schedules for all corrective action sites (SWMUs and AOCs). Again, the public cannot review what doesn't exist. Because the proposed Consent Order also eliminates public review and comment on the future modification of the Consent Order (for example, modifying the milestones in Appendix B), the public will be denied the opportunity to comment on corrective action schedules (at least the initiation of corrective action) for many, and perhaps most of the SWMUs/AOCs at LANL that have not advanced to date to the stage where a Certificate of Completion has already been issued.	No change.
WM	Given that there appears to be a 1000 or more SWMUs/AOCs at LANL, the amount of work associated with the milestones in the	No change.

	proposed Consent Order seems too little if the goal is to accelerate completion of all corrective action activities at LANL. Most of the milestones involve what appear to be just submittal of documents that are just status reports or risk assessment reports that require comparatively little effort or funding to prepare. Because little field work or other complex work appears to be included as milestones, I surmise that NMED accepts that little progress under the new Order is initially to be made. This seems contrary to the "guiding principle" mentioned in Comment 9 concerning wanting to accelerate corrective action.	
WM	For the RDX IM and Remedy Campaign, the aquifer test and tracer test results with analysis of the data (i.e. a Report), are to be deferred (they are to be included in the CME). An analysis of an aquifer test in particular is a technically complex task and is a part of site characterization. It is inappropriate to include such as analysis at the CME stage. Instead, the analysis should be completed before the CME stage. I also question the inclusion of tracer test analysis (Report) in a CME. A tracer test is part of site characterization. Normally only the results of aquifer and tracer tests would be summarized in a CME and the source documentation referenced. If the NMED did not accept the results of such tests it could completely derail the CME process -- wasting time, effort, and funds. I'll add that the only reason I see for adding the analysis of aquifer and tracer test results in the CME is to relieve Respondent from initially having to find money to do this work. Given how little work is being committed to in Appendix B of the proposed Consent Order, I speculate that LANL doesn't currently have much funding on hand for corrective action. Regardless, it's unreasonable to include analysis of site characterization data in a CME. I note that the purpose of the CME, as specified in the proposed Consent Order in Section XVI.B, does not mention doing site characterization work at the CME stage.	No change.
WM	While milestones are supposed to be enforceable schedules, the descriptions of some the milestones are so vague (for example, exactly which sites within aggregates of sites require the action) that NMED may not prevail in court if the Respondent fails to meet a milestone and challenges the demand for stipulated penalties. The milestones should be clarified by adding more detail as to exactly what is to be done for	No change.

	each site where there are multiple sites involved in some kind of aggregated area (e.g. MDA, TA, Operable Unit, Watershed, or whatever grouping of sites).	
CH2M	An additional schedule for estimated completion dates would assist in resolve some apparent discrepancies between the Appendices, for example: • In Appendix B, MDA A and T Remedy, the target dates extends to FY2019 and in Appendix C, it indicates that this is approximately a 5 year campaign (which is outside the FY2019 range). • Some milestones and targets appear to start and reach completion in FY2019, however Appendix C indicates a 2.5 year campaign (for example, Southern External Boundary).	No change.
CH2M	Please clarify whether the milestone dates are for the initial version under NMED formal review or if this date includes the review/revision process.	No change.
San I	Looking at Appendix B that lists the Milestones and Targets and Appendix C that lists the Campaigns expected to be performed by LANL, the Pueblo is very pleased to see the Chromium contamination as a corrective action campaign and that there are interim measures identified as a milestone to prevent further migration of the chromium plume beyond LANL's boundaries into San Ildefonso lands and groundwater. The chromium contamination matter is of grave concern to the Pueblo de San Ildefonso given the proximity of the plume to the LANL- Pueblo de San Ildefonso boundary line and the important traditional and cultural significance of the surrounding area.	No change.
San I	Appendix B -Milestones and Targets should have headings to clearly show "milestones" which are enforceable deadlines and "targets" which are non-enforceable deadlines. The campaigns should have headings for the groups of projects or activities relating to that particular campaign rather than just the double lines between the different campaigns. In addition, the term "campaign" should be defined as a term even though there is a description of "campaigns" at VIII.A. of the DCO.	No change.
Appendix C		
JA	Point O of Appendix C [page 4] needs to be changed to remove any further characterization requirements. I was personally involved in characterization of Material Disposal Area AB in the 1970s and 1980s.	No change.

	With that characterization data and all that incurred in the 30+ years since then, there should be ample data to make a remedy selection. The radiological components of the waste are very well known and the hazardous waste components are well known. Location of the shafts and placement of the waste is well known. Additional drilling will only enhance the opportunities for failure of any remedy because it will create additional pathways to groundwater.	
All other Appendices		
EPA	Consider providing a template for CMI Work Plans and CMI Reports.	Yes – Appendix E, Section VII
EPA	The verb "should" is used throughout Appendix F when describing actions or activities that are to be performed during investigations, suggesting that the described activity is optional. While this may be true in certain cases, in many instances it seems preferable to replace the word "should" with "shall" or "must", thereby removing ambiguity and increasing the likelihood that DOE submits work products consistent with NMED expectations.	No change.
Nuke Watch 2	**List of Acronyms** All acronyms must be listed IM? ACA? RFI? STET?	No change.
WM	Appendices E and F concern the NMED's expectations for field investigation procedures and major contents of corrective action documents. As indicated above, including prescriptive requirements in the original Consent Order for field investigation procedures and contents of corrective action documents was a necessity as Respondent and its contractors were submitting inadequate documentation in support of what were also inadequate investigations. While these prescriptive requirements are enforceable under the original Consent Order, they are now to become mere suggestions through the proposed Consent Order. This is an example of going backwards, rather than forward with corrective action at LANL, should the proposed Consent Order be finalized as currently written.	No change.
CH2M	Suggest the following revision: "The purpose of this Appendix (~~D~~E) is	Yes – Appendix E, Paragraph 1

	to . . . “	
CH2M	Recommend issuing this appendix as a guidance document not appended to the consent order.	No change.
CH2M	Recommend issuing this appendix as a guidance document not appended to the consent order. Using the appendix as a guidance rather than a requirement introduces the benefit of using industry expertise in determining the strategies and approaches for data collection, analyses, and evaluation in accordance with the collaborative DQO process.	No change.
Other Comments		
JZ	The 2005 Consent Order was designed as a plan-to-make-a-plan with investigations of contaminated sites followed by cleanup decisions and remediation. Milestones and penalties were included to keep funding and cleanup on track.	No change.
JZ	Serious investigation and cleanup began under the 2005 Consent Order. From 2005 through 2010, DOE and its contractors, under NMED oversight, made significant progress toward cleanup of the Laboratory. Much investigation and work was completed. A large plume of hexavalent chromium was discovered in groundwater. Remedies were completed at dozens of individual sites.	No change.
JZ, A y A, SH, PR, ST	This draft represents a big step backwards in achieving the goal of genuine, comprehensive cleanup of the Laboratory. The Environment Department should keep the current 2005 Consent Order with necessary revisions to the cleanup schedule and withdraw this draft Consent Order.	No change.
SN3	First and foremost I would like to congratulate the New Mexico Environmental Department, NMED, for their excellent work to negotiate this Draft Consent Order with the DOE, and release it for public comment. Action was needed and you have taken action to move the regulatory process in a positive direction.	No change.
SN3	Environmental cleanup from the legacy production of nuclear weapons is difficult, dangerous, and controversial – nowhere more so than at Los Alamos, the birthplace of nuclear weapons technology. The experience at Los Alamos has shown us all that priorities change, surprises occur, and mistakes occasionally happen. These aspects of environmental	No change.

	cleanup should not be viewed as negative, rather they should be expected for a program with this degree of uncertainty and complexity. The Draft Consent Order very appropriately is developed to recognize that need for flexibility in addressing the cleanup programs' many challenges, in a manner that is informed by new information, changes in technology, changes in available funding, and the interests of the surrounding stakeholders. Moreover, the Draft Consent Order stresses communication and collaboration, necessary elements to complete a program as difficult as this.	
SN3	At the same time, this Draft Consent Order is not so flexible as to allow the DOE to avoid its cleanup responsibilities. The areas of known and potential concern are comprehensively documented, with the provision to include additional areas if warranted. Cleanup milestones and target goals are established in the near-term, when budget levels are known with greater certainty. Priorities will be revisited at least annually until the scope of the Draft Consent Order is fully completed. Public stakeholders will continue to have extensive access to characterization and monitoring information, and will have a voice in the consideration of interim and final cleanup remedies through the NMED exercise of their authority under the Resource Conservation and Recovery Act.	No change.
HR	I am very pleased that NMED is taking a much stronger role in enforcing the actual cleanup at Los Alamos National Laboratory. It is common sense that you target Federal cleanup dollars on those activities that offer the greatest protection for the public.	No change.
EPA	Consider adding a provision to the Consent Order addressing new or emerging contaminants.	No change.
JA	Before signing, the signatories should make it clear what they expect to accomplish, the costs to accomplish that and the schedule. It should be made available in an executive summary of less than five pages. I call for a public hearing to bring transparency to this order.	No change.
JA	It is being negotiated without the contractor or NNSA [for programmatic coordination] at the table. Also, the current draft of the Compliance Order on Consent needs to be clear that it is an improvement on the previous order which had no clear emphasis on remediation. It needs a bias for action! It is difficult to find out costs	No change.

	and results from the current order.	
JA	As shown in the attachment from the public hearings on the RCRA permit in 2010, in the first six years of the current order, nearly $1B was spent. Less than 10% went for cleanup. Since it is difficult to find real data on the costs since then, assume $100M -150M/yr has been spent through FY2016 bringing the total spending on the current order to $1.5B or more. What has been accomplished? NMED and DOE should publicly state what remediation has actually occurred and been closed with this $1.5+B. List the projects by year and their cost.	No change.
JA	Should a reporter or politician chose to make this an issue, the money already spent poorly is much larger than the $535M from the Solyndra scandal of several years ago. This misspending for this order goes across political party lines having started in the Bush years in the White House and continuing into the Obama years. At the state level, it has crossed the Richardson and Martinez administrations. With the draft order, I expect there will be improvement in percentage spent for remediation, but if actual remediation costs are not a large fraction of the total spent, the scandal will continue to grow. Exhaustive characterization and excessive confirmation sampling must become a thing of the past.	No change.
JA	Another of the issues over a number of years has been the TRU waste drums stored in tents at TA-54. It is a prime example of regulatory mismanagement and lack of strategic thinking by NMED and allowed by EPA. The drums were safely stored on asphalt pads and covered by an earthen tumulus. When NMED got regulatory in the authority over the hazardous waste portion of the contents of the drums in the early 1990s, they correctly noted that weekly inspections could not be made to see if the drums were leaking but then their thought process went awry. They fined DOE and LANL a large sum and required the drums be uncovered and placed on asphalt pads covered by large tents so they could be inspected weekly. At the same time, they were fighting the only pathway to disposal – the opening of WIPP - and managed to delay its opening by nine years to 1999. The Cerro Grande fire in 2000 was a serious threat to those drums and would not have been had the drums been left covered and LANL been able to uncover the drums and prepare them for shipment to an operating disposal site in a controlled manner. The NMED fear of leaking drums was largely unfounded and	No change.

	had leakage occurred it wouldn't have spread very far and would have been contained with no risk to the environment or humans.	
JA	Over the past eleven years, NMED has provided certifications of completion for only 243 of 1397 solid waste management units and areas of concern [page 30 Appendix A]. NMED continues to request supplemental investigation reports [Appendix D] requiring additional expensive sampling and information after a remedial action has been completed. Not once has this additional expense caused any alteration to a decision. NMED needs to wean itself from the comfort of just a bit more information. I suggest that if NMED wants more information, it should come from the NMED budget. After an area has been determined to need to no further action, it means just that. No further public meetings are necessary or required.	No change.
JA	The remediation train has been misaligned on the remediation track. As a consequence, great amounts of fuel [money] have been spent to force the train down the track. The taxpayers deserve better. I am highly encouraged that the governing principles of this draft order recognize this dilemma. Recognition is the first step towards significant improvement. The real test will be implementation of these principles. The new draft of the order should not be signed until it is clear that the train is clearly aligned on the track so it can run smoothly thus requiring less fuel. The following are some elements that are needed to get on track: - Transparency. - Clear and actual commitment by NMED and DOE to a bias for action. - Charts should be prepared with the following columns: FY, total budget for that year, actual remediation accomplished by site, description of that remediation, the cost for that remediation and the risk mitigated by that action. These charts should be provided for past years and for what is planned in coming years. - Actual alignment of remediation goals and processes as stated in the draft order. - Thoughtful engagement by the EPA including a review by the EPA Inspector General on how NMED has handled its responsibility and the lack of adequate oversight by the regional office. - EPA should carefully monitor NMED's adherence to the governing	No change.

	principles. Without dramatic improvement over past performance, EPA should consider withdrawing its delegation of authority to NMED and do the cleanup under CERCLA which doesn't require direct state involvement. - Thoughtful cleanup criteria and goals. A dollars-per-life-year-saved analysis would be instructive. - Elimination of double standards. LANL should not be held to stricter standards than any other entity in New Mexico. Funds spent to date on the double standards should be identified. - Review by a DOE oversight group, perhaps the Inspector General, on why DOE continues to fund a program with so little real progress and why didn't DOE take matters to court when faced with unreasonable demands. - A plan for prioritization for work if funding is reduced after the change in administration in Washington.	
RJ	Enforcement must be taken out of the hands of the NMED, since under the 2005 Consent Order NMED let LANL slide on at least 12 missed cleanup deadlines. In addition NMED has not enforced collection of approximately $250,000,000 in payments to the state as a result of fines that should have been levied against LANL. Enforcement of deadlines and penalties are the only leverage we have to ensure that the money is appropriated and the cleanup happens. NMED has shown that it is looking out for LANL and not for the citizens of New Mexico.	No change.
RJ	The proposed new consent order offers no relief for the problems of the 2005 Consent Order. Therefore, the Environment Department should withdraw this proposed new consent order.	No change.
KW	A current list of the status of all cleanup at Los Alamos must be included in the new Consent Order. I request that the next step for cleanup at every site be documented in detail. All previous 2005 Consent Order documents must be incorporated in to the new Consent Order.	No change.
Nuke Watch 1	We urge the New Mexico Environment Department (NMED) to abandon the proposed 2016 Compliance Order on Consent, or Consent Order, for Los Alamos National Laboratory (LANL), released for public comment on March 30, 2016. It creates serious problems and represents a giant step backwards in achieving the goal of genuine	No change.

	cleanup of the Laboratory.	
Nuke Watch 1	The Environment Department should keep the existing Consent Order that went into effect March 1, 2005, while modifying and updating a cleanup schedule that includes a realistic final compliance date.	No change.
Nuke Watch 1, KS	**Withdraw the proposed draft 2016 Consent Order** • The proposed draft represents a big step backwards in achieving the goal of genuine cleanup of the Laboratory. • The Environment Department should keep the current 2005 Consent Order and revise the Section XII cleanup schedule and final compliance date. • I request that the Environment Department withdraw the proposed draft 2016 Consent Order.	No change.
Nuke Watch 1, KS	**The current state of cleanup must be updated and next steps scheduled** • Work under the existing 2005 Consent Order needs to be subject to public review. In 2005 DOE agreed to complete cleanup under the Consent Order by December 6, 2015, which did not happen. In order for the public to understand where the work under the existing Consent Order stands, LANL should be required to provide a current, publicly available list of the status of all cleanup projects under the 2005 Consent Order. • Further, I request that next steps for cleanup at every site listed in the 2005 Consent Order be documented in detail and given a scheduled completion date, or alternatively verified as already completed. • All documents submitted under the 2005 Consent Order must be incorporated into any revised Consent Order.	Yes – Section VIII.C.3.d
Nuke Watch 1, KS	**The Environment Department must respond in writing to all public comments** • I request that the State reply individually to each and every comment submitted. • The Lab's comments and NMED's response to comments	No change.

	must be made public.	
Nuke Watch 1, KS	**The Consent Order cannot be open-ended** • Any Consent Order for LANL cleanup must have a final compliance date to which the State and the Lab agree to and are so bound. • The public should be given an opportunity for a public hearing on the new final compliance date as required by New Mexico's hazardous waste regulations.	Yes – Section VIII.C.4
Nuke Watch 1, KS	**Attorney General Approval Must Be Obtained** The 2005 Consent Order was signed by the Attorney General of New Mexico for purposes of the Covenant Not to Sue (section III.) and the Reservation of Rights (section III.). As indicated on the draft signature page, there is no indication of the NM Attorney General plans to sign the proposed 2016 Consent Order. Yet it would provide the State of New Mexico with a covenant not to sue DOE on behalf of the State of New Mexico, not merely on behalf of the Environment Department. The Attorney General was an active participant, representing the People of New Mexico, in the 2005 Consent Order. The Environment Department has a responsibility to ensure that the NM Attorney General is consulted, and his approval obtained, before any consent order is adopted.	Yes – Section XXXIV
KS	This is for all citizens of NM to know and hold as reserved resolution. Dirty politics is not allowed gains over our rights for just representation.	No change.
Nuke Watch 1	In closing, the Environment Department's proposed 2016 Consent Order allows the federal government to leave Northern New Mexico contaminated if DOE believes that cleanup is too difficult or costly– a sorry situation indeed for a nuclear weapons facility that receives over 2 billion taxpayer dollars a year. Instead, the New Mexico Environment Department should implement a new revised Consent Order that is aggressive and enforceable and in which the State of New Mexico stays in the driver's seat, not LANL and DOE.	No change.
KS	In closing, the Environment Department's proposed 2016 Consent Order allows the federal government to leave Northern New	No change.

	Mexico contaminated if DOE believes that cleanup is too difficult or costly– a sorrowful situation for a supposedly highly technologically advanced nuclear weapons facility that receives over 2 billion taxpayer dollars a year. Instead, the New Mexico Environment Department should implement a new revised Consent Order that is aggressive and enforceable and in which the State of New Mexico stays in truthfulness to keeping NM safe from harm. And industries that harm our Mother Earth's land-based peoples, such as LANL and DOE's lack of conscience to not do practices of business that causes harm. That would be a real win-win for New Mexicans, helping to permanently protect the environment and our precious water resources while making the for profit industry to do the creating of hundreds of high-paying cleanup jobs and do it with safety for their health in mind. And if not so, put a limit on their ability to operate in sacred places and spaces where once all life was precious and worth of human accountability. Putting a stop to sloppy business must be also a consideration for bullies on the basalt block. I shall put good thoughts for your sane, sober thinking with guidance from Creator of ALL good things possible.	
KD	Globally throughout the Draft Consent Order (CA), the terminology "should include" is applied. The term "should" is ambiguous at best and does not specifically require the Permittee to comply with the CA but rather allows discretion as to whether the Permittee needs to comply. Just one of many examples: Appendix F part I states that "site-specific work plans should include the data quality objectives and proposed methods…." The United States Environmental Protection Agency (U.S. EPA) delegates the primary responsibility of implementing the Resource Conservation and Recovery Act (RCRA) hazardous waste program to individual states in lieu of the EPA. This process ensures national consistency and minimum standards while providing flexibility to states in implementing rules. The State of New Mexico received authorization on January 25, 1985 from the U.S. EPA to implement its base hazardous waste management program. On January 2, 1996, New Mexico received authorization to implement Hazardous and Solid Waste Act (HSWA) corrective action. New Mexico received its most current authorization from the U.S. EPA on	No change.

	October 16, 2007. States that receive final authorization from the U.S. EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent that the Federal Hazardous Waste Program. However, the U.S. EPA Corrective Action guidance clearly outlines what the minimum requirements are for the various phases of corrective action, to include work plans, RCRA Facility Investigations, Corrective Measures Studies/Implementation, and other closure documents. The use of terms such as "should" in the Draft CA is in violation of the State authorization act, in that allowing such flexibility in RCRA investigations/compliance is deemed less stringent than the Federal Hazardous Waste Program. The Draft CA must be globally revised to clearly state the requirements for corrective action. The term "should" much be removed throughout the Draft CA and replaced with "will", "must", "shall", or similar so that the Draft CA is in compliance with the Federal Hazardous Waste Program and State authorization rules.	
AL	It is a pleasure to work with you and Secretary Flynn. I look forward to hearing from you at a future Coalition Meeting on the status of the Consent Order. Do not hesitate to ask if there is anything I can do to help in the effort or other environmental issues in our City.	No change.
KL	I support not having an end date for the CO. The dates in the 2005 didn't seem to help that much in terms of getting funding and I think support from the Codels, Governor, Pueblos, local units of government and activists help drive funding more than dates in a CO. As you know environmental work is phased and data-driven and arbitrary deadlines can create public perception that the work being done and/or the corrective action process are flawed. The schedules in the work plans and CMIs give NMED significant enforcement authority.	Yes – Section VIII.C.4
KL	Strongly support removing prescriptive document format requirements and placing example document templates in an appendix. This will help keep the focus on action not process for processes sake. If there is time before the CO is finalized I suggest looking for EPA examples instead of using the old CO language as example templates.	No change.
AG	As a citizen of NM, I greatly appreciate your diligence in trying to ensure the legacy waste at LANL is cleaned up properly in effort to	No change.

	maintain quality of life for New Mexicans. I was born and raised in the beautiful Espanola Valley; unfortunately, the beautiful valley is plagued with poverty and drugs. I work in Los Alamos County, but I commute from the valley. A part of me would love to live in Los Alamos because of the excellent educational system and the wonderful services provided to the residents. At the same time I wonder if I will subject myself and my son to the environmental risks of living in LA. If he is playing in the canyons will he be potentially exposed to something toxic? What if he stumbles across a contaminated PCB pond? If I grow a fruit or vegetable garden will they be safe to eat? As you can see I am stuck between a rock and a hard place. Should I live in a community plagued with drugs and poverty or a community wealthy in education and community service, yet contaminated with PCB's, RDX, perchlorate and chromium? My concern comes from a very basic place. I want access to clean water, parks, canyons, rivers, trails. I want to let my son play in the dirt, hike in the canyons, catch fish and eat them. I want to know that I am not subjecting him to toxins and pollutants in exchange for quality education and a decent place to live. Bottom line, I support the efforts you are trying to make with the draft consent order and to clean up Los Alamos.	
TF	As a 33 year resident of Taos, New Mexico, I request that clear timelines and stringent cleanup requirements with enforcement and penalties are written into the draft Cleanup Consent Order for LANL. The present draft Cleanup Consent Order creates delays for cleaning up the legacy radioactive and hazardous waste dumped at LANL during the Cold War, which are above drinking water supplies for Pueblo de San Ildefonso and Los Alamos and Santa Fe Counties. Over the past four and one-half years, the Environment Department granted LANL more than 150 extensions of time under the currently operating 2005 Consent Order. Now the draft Order allows	No change.

	the Department of Energy (DOE), the owner of LANL, to opt out of cleanup because of "impracticability" or if it costs too much. The Environment Department proposes to relinquish its regulatory power by allowing DOE to dictate the terms of cleanup, including the levels of pollutants allowed to remain in soil and water.	
TF	The draft Order does not include a final compliance date, which the 2005 Consent Order contains. The legacy waste cleanup was supposed to be done by December 6, 2015 with the cleanup of the 63-acre Area G dump. That did not happen. For that reason and others, Nuclear Watch New Mexico filed a citizens' suit under the hazardous waste laws against DOE and Los Alamos National Security, LLC (LANS), the management contractor, for missing the 2005 Consent Order cleanup deadlines. Nuclear Watch is asking for a court order requiring DOE and LANS to come into compliance with the 2005 Consent Order "according to a reasonable but aggressive schedule." http://www.nukewatch.org/pressreleases/NW-PR-Lawsuit-5-17-16.pdf.	No change.
LA Co.	The Order should include provision for a role for the County in the cleanup process, at the County's option. The Order does not adequately recognize the governmental responsibility of the County for the protection of human health and the environment nor does it adequately reflect the historic relationship of the County to the DOE mission at LANL. There is no provision for involvement of the County as a participant in the process of achieving the substantive or procedural objectives of the Order. Further, the Order lacks specificity with respect to a public process. Although the County, NMED and DOE have very good relationships and communications between the governmental entities are clear, that has not always been the case. In the past NMED or DOE has not included the County in key decisions or declined to release certain information and the proposal language will ensure that the County can participate in future issues impacting the County. We suggest that NMED add the following language to the Consent Order: "*DOE shall afford the Incorporated County of Los Alamos with the opportunity to participate in the*	Yes – Sections VIII.B.5 and XXXIII

	planning and selection of the remedial action, and the development of studies, reports, and action plans, including but not limited to the review of all applicable data as it becomes available to DOE (including draft documents)."	
LA Co.	The Order involves significant history of the cleanup and consent orders and is an attempt to create a "collaborative" but enforceable process to address the non-radioactive contamination at the Facility, as that term is defined in the Order. There is no specific provision for applicability of the Order beyond the boundaries of LANL or "the Facility", such as where contaminants have migrated off-site.	No change.
LA Co.	The County strongly supports the amended Consent Order, as it promotes the use of cleanup funds for actual cleanup work. With the expectation that DOE will continue to move forward and meet the milestones, the County is encouraged by the terms and conditions of this Consent Order and applauds both DOE and NMED for working collaboratively to create an atmosphere of collaboration and mutual interest.	No change.
ST	The cleanup of Los Alamos nuclear waste is a huge priority for the citizens of northern New Mexico. The threat of air and water contamination from Los Alamos is very real, and it only gets harder to deal with as time goes on.	No change.
ST	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.	No change.
ST	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	No change.

	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.	
ST	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.	No change.
ST	DOE is in the process of hiring a new cleanup contractor for LANL and recently issued a Request For Proposals (RFP), which states: The total estimated value of the contract is approximately $1.7B [billion] over the prospective ten-year period of performance, including option periods. The ten-year contract amount would average out to $170 million per year, well below the current proposed budget of $189 million for Fiscal Year 2017 (which begins October 1, 2016). Before a contract is even signed, 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. Further, there is no mechanism in the proposed 2016 Consent Order to increase, or to even maintain, a stable annual cleanup budget.	No change.
KF	As a New Mexican who lives downstream from LANL, I am very disappointed that the draft appears to be a serious step backward from the 2005 consent order. That consent order required a full clean-up of LANL's legacy Cold War wastes. This new draft lacks enforceable goals for cleanup, and as a result, many sites may never be fully remediated.	No change.
KF	I urge you to withdraw this draft and maintain the current 2005 consent order with necessary revisions to the cleanup schedule.	No change.
KF	Even more troubling is that the draft consent order creates a giant loophole allowing the Department of Energy and LANL to get out of	No change.

	completing the cleanup based on budget limitations. The original intent of the consent order was to force DOE and LANL to seek more funding for cleanup from Congress. The budgetary excuse for failing to complete needed cleanup should be eliminated from any final consent order.	
KF	I also urge you to update the current status of all areas of cleanup and to include this information in the new consent order. Please detail the next steps for cleanup at every site and incorporate all previous 2005 consent order documents into the new consent order.	No change.
CV	The draft consent order would replace the Compliance Order on Consent issued by the Environment Department to DOE and The Regents of the University of California (UC), the DOE contractor that operated the Laboratory, on March 1, 2005 (2005 Consent Order). The March 2005 Consent Order, which is still in effect, requires DOE and UC (now Los Alamos National Security LLC, or LANS, the current DOE contractor that operates the Laboratory) to conduct the comprehensive investigation and cleanup of environmental contamination at the Laboratory. The 2005 Consent Order was revised twice, on June 18, 2008 and on October 29, 2012. Prior to implementation of the 2005 Consent Order, DOE and its contractors made woefully little progress in cleanup of the Laboratory. Investigation and cleanup efforts were piecemeal, uncoordinated, sporadic, protracted, underfunded, and ineffective. According to former Environment Department employees, one of the goals of the 2005 Consent Order was to force DOE to fund investigation and cleanup sufficiently and comprehensively. DOE and its contractors would face stiff penalties if they did not do so. Consequently, the Environment Department, on May 2, 2002, made a determination that conditions at the Laboratory posed an imminent and substantial endangerment to health and the environment under the New Mexico Hazardous Waste Act (HWA), NMSA 1978, § 74-4-13. The Environment Department, also on that date, issued a unilateral cleanup order in draft form for public comment. On November 26, 2002, the Environment Department issued the final unilateral order to DOE and UC. DOE and UC responded by promptly suing the Environment Department in State and federal court. It then took nearly two years, under two administrations (Governors Johnson and Richardson) to	No change.

	negotiate and approve the 2005 Consent Order. The 2005 Consent Order was signed, not only by the Environment Department, DOE, and UC, but also by the New Mexico Attorney General (for purposes of the Covenant Not to Sue and Reservation of Rights provisions). The 2005 Consent Order is very similar, in all its major provisions, to the original November 2002 unilateral order.	
CV	With the 2005 Consent Order in place, DOE and its contractor began investigation and cleanup in earnest. From 2005 through about 2010, DOE and its contractors, under close Environment Department oversight, accomplished a tremendous amount of work towards cleanup of the Laboratory. Most of investigation work was completed. A large plume of hexavalent chromium was discovered in groundwater migrating into Mortandad Canyon. Remedies were completed at dozens of individual sites. In 2011 and 2012, however, as the Martinez Administration "realigned" its priorities, and granted extension after extension of 2005 Consent Order deadlines – more than 150 extensions in all – cleanup efforts at the Laboratory slowed markedly. Little has been accomplished in the last three of four years. We fear that the draft consent order, if adopted, would continue that downward trend. The Environment Department would give up all the legal leverage it has over DOE and its contractors, and return to the paradigm of protracted, ineffective cleanup. That would be a huge loss for the people of New Mexico, and for their environment.	No change.
CV	Moreover, the Environment Department would have very little leverage in the annual negotiations. Significantly, despite the many deadline extensions that the Environment Department granted to DOE and LANS, by 2014 the Department began denying extension requests. Consequently, DOE and LANS are liable for potentially millions of dollars in stipulated penalties under the 2005 Consent Order. But under section II.A of the draft consent order, the order would "settle any outstanding violations of the 2005 Consent Order." Thus, under the draft consent order, the Environment Department would give away all its bargaining power – i.e., its claim for penalties – and get essentially nothing in return. Without a schedule the order is unenforceable. Only later would a limited (one-year) schedule be negotiated, with the Environment Department having no cards left to play. This would be a wonderful deal for DOE. It	No change.

	would amount to an effective abdication by the Environment Department of its authority and its responsibility as a regulatory agency.	
CV	The 2005 Consent Order was signed by the Attorney General of New Mexico for purposes of the Covenant Not to Sue (section III.S) and the Reservation of Rights (section III.T). The draft consent order would not be signed by the Attorney General, as drafted. Yet, in section XXXIV, it would provide DOE with a covenant not to sue on behalf of the State of New Mexico, not merely on behalf of the Environment Department.	Yes – Section XXXIV
CV	Oddly, the draft consent order would impose obligations only DOE, not on its contractor, LANS. It may be that DOE intends drop LANS as its primary contractor. But until that happens, LANS remains the operator of the Laboratory facility, and is liable for corrective action under the HWA and the federal Resource Conservation and Recovery Act. Moreover, if a new contractor is retained, that contractor would be obligated to comply with the order as the successor to LANS. Such a succession occurred under the 2005 Consent Order, as the contractor's obligations automatically passed from UC to LANS.	No change.
CV	We see many, many other problems with the draft consent order. But we are focusing only on some of the most serious issues in these comments. Overall, the draft consent order would be a very good deal for DOE and its contractor. It would be a very bad deal for the State of New Mexico.	No change.
CV	We urge the Environment Department to abandon the draft consent order. It is fraught with serious problems, and represents a big step backwards in achieving the goal of cleanup of the Laboratory. Instead, the Environment Department should retain the current 2005 Consent Order and, using the threat of penalties as leverage, negotiate a revised cleanup schedule – one that is strict yet reasonable, and one that includes a final completion date. The public should be given an opportunity for an evidentiary hearing on the revised schedule with the new completion date, in accordance with the HWA and the 2005 Consent Order.	No change.
Nuke Watch 2	As you know, Nuclear Watch New Mexico closely follows cleanup issues at the Los Alamos National Laboratory (LANL). Our mission statement includes citizen action to promote environmental protection	No change.

	and cleanup at nuclear facilities. We have been an active participant in hazardous waste management and cleanup issues at the Laboratory. We have advocated for increased cleanup funding for over fifteen years. We provided technical and procedural comments on two drafts of the original Consent Order, which went into effect in March 2005 (modified October 2012). We also participated in the LANL Hazardous Waste Permit negotiations and hearing during 2009 and 2010. Nuclear Watch is certain to remain strongly active in cleanup issues at the Lab.	
Nuke Watch 2	Additionally, as private citizens we have often hiked, hunted, climbed and cross country skied in the canyons and on the cliffs around the Laboratory and in the adjacent Bandelier National Monument, Santa Fe National Forest and Valles Calderas National Preserve. As such, Nuclear Watch New Mexico clearly has strong standing in cleanup issues at LANL, and in particular any revised Consent Order governing cleanup at the Lab.	No change.
Nuke Watch 2	We urge the New Mexico Environment Department (NMED) to withdraw its proposed 2016 Compliance Order on Consent ("Consent Order") governing cleanup at the Los Alamos National Laboratory (LANL), released for public comment on March 30, 2016. If implemented, the revised Consent Order will almost certainly create serious barriers to achieving cleanup, especially given the Lab's known opposition to full and complete cleanup. In addition, the proposed revised Consent Order limits public participation opportunities; undermines enforceability by the Environment Department; puts the Department of Energy (DOE) in the driver's seat; and lacks a final milestone compliance date. The proposed 2016 Consent Order is potentially a giant step backwards if the goal is to achieve genuine, comprehensive cleanup at LANL.	No change.
Nuke Watch 2	Instead, the Environment Department should basically keep the existing Consent Order that went into effect March 1, 2005, modified as needed with new realistic milestone compliance dates. 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	No change.

	completion of final cleanup remedies. These deadlines were enforceable under section III.G of the 2005 Consent Order.	
Nuke Watch 2	As explained in these comments, in our view the New Mexico Environment Department has preemptively surrendered enforcement power to DOE, particularly through allowing a giant loophole whereby the Energy Department and the Lab can simply plead that they don't have enough money for cleanup. This is the direct opposite of the original 2005 Consent Order, whose underlying intent was to make DOE and LANL ask Congress for additional funding for accelerated cleanup. This is particularly galling given that LANL is key to the trillion dollar rebuilding of nuclear forces as the premier nuclear weapons design lab and the nation's sole production site for plutonium pit triggers, the most critical nuclear weapons components. Funding for Department of Energy (DOE) nuclear weapons programs is nearly double historic Cold War averages, with around $1.5 billion spent annually at LANL alone. In contrast, funding for Lab cleanup has been cut to $189 million for FY 2017, with only approximately a sixth going to actual cleanup.	No change.
Nuke Watch 2	The original 2005 Consent Order required DOE and LANL to investigate, characterize, and clean up hazardous and mixed radioactive contaminants from 70 years of nuclear weapons research and production. It also stipulated a detailed compliance schedule that the Lab was required to meet. Ironically, the last milestone, due December 6, 2015, required a report from LANL on how it successfully cleaned up Area G, its largest waste dump. However, real cleanup remains decades away, if ever. Instead, the Lab plans to "cap and cover" Area G, thereby creating a permanent nuclear waste dump in unlined pits and shafts, with an estimated 200,000 cubic yards of toxic and radioactive wastes buried above the regional groundwater aquifer, four miles uphill from the Rio Grande.	No change.
Nuke Watch 2	Nuclear Watch New Mexico asks that senior NMED management carefully consider all this, as Environment Department leadership will be gone in a few years, but a revised Consent Order will remain that is likely doomed to failure in compelling DOE and LANL to fully cleanup. That would be a real failure in leadership because genuine, comprehensive cleanup at LANL would be a real win-win for New Mexicans, permanently protecting the environment and our precious	No change.

	water resources while creating hundreds of high paying jobs (for more, see Attachment B).	
Nuke Watch 2	Nuclear Watch urges the Environment Department to simply modify the 2005 Consent Order with updated Section XII cleanup schedules that provide realistic final milestone compliance dates. Long-range, concrete schedules are key to holding DOE and LANL accountable for cleanup and to incentivize increased funding for cleanup, contrary to the declining funding that we are now witnessing. Having said that, we are not advising that there be an end date to the Consent Order itself, as it is obvious that compliance milestones schedules will have to be periodically modified as cleanup remedies are selected and implemented, and/or new contamination discovered requiring cleanup, such as occurred with the chromium groundwater plume.	No change.
Nuke Watch 2	The revised Consent Order as proposed is a giveaway to the Department of Energy and LANL who created the mess to begin because it lacks enforceability and puts DOE in the driver's seat.	No change.
Nuke Watch 2	NMED's responsibility is to make sure that New Mexicans and the environment and our precious water resources are protected, and not to accommodate DOE's funding priorities. Cleanup costs are DOE problems that DOE caused to begin with. Claims of poverty in cleanup funding are mighty hard to swallow when nuclear weapons programs are awash in taxpayers' cash. To repeat yet once again, promulgate a Consent Order with updated compliance milestones that are fully enforceable with the vigorous use of stipulated penalties. Make DOE and LANL go out and get the money for accelerated cleanup. Protect the homeland by cleaning it up.	No change.
Nuke Watch 2	More generally, the proposed Consent Order is replete with "should." "Shoulds" must be "shalls", otherwise DOE is in the driver's seat and genuine, comprehensive cleanup won't be accomplished at LANL.	No change.
Nuke Watch 2	On May 26, 2016, DOE posted a Draft Request for Proposals (RFP) of the Los Alamos Legacy Cleanup Contract (LLCC) for review. The proposed 2016 Consent Order is the guts of the draft RFP. As the DOE document states that the "draft 2016 Consent Order is the contract requirement that all Offerors shall propose to and comply with…" (Pg. C-2) At the very least, it's premature for DOE to request bidders to frame a work proposal centered on a Consent Order that is still draft. What is DOE's rush? We think the answer lies in just how	No change.

	favorable the proposed Consent Order is to DOE. This evidence of how badly DOE wants it.	
Nuke Watch 2	A quick review of the "Campaigns" sections in both the draft RFP and the proposed Consent Order show them to be nearly identical in exact language. (The DOE RFP's *Attachment J-8 Campaign Cross Walk to PWS Sections* is incorporated into our comments as Attachment D.) DOE does not caution that this information was taken from a draft document and is still far from approval. Or is it far from approval? DOE's speed and use of nearly identical language makes it difficult for us to believe that there has been no closed door negotiations between NMED and DOE over the proposed Consent Order. On numerous occasions, the draft RFP refers to specific sections of the proposed Consent Order. For example the draft RFP states, "The most significant requirement[s] for monitoring groundwater are identified in the 2016 Consent Order, Section XII, *Groundwater Monitoring*.' (Pg. C-58) For the most part, the draft RFP does not use the word 'draft' when referring to the proposed 2016 Consent Order. So, it feels as if the proposed 2016 Consent Order is a done deal and that public comments will have little impact. DOE is all in and ready to move on the 2016 Consent Order, precisely because it is so advantageous to it and LANL. Now they can get it on with the real business of producing new nuclear weapons for they are already calling the Second Nuclear Age before they have cleaned up from the first nuclear age, while just meeting the procedural hurdles of a gutted Consent Order. Would DOE waste a bunch of contractors' time working on a bid for proposed Consent Order work that will substantially change after public comments? We think not.	No change.
Nuke Watch 2	**NMED leadership should refrain from saying that the 2005 Consent Order didn't work.** How could it work when that same leadership granted more than 150 time extensions for compliance milestones? Saying that the 2005 Consent Order didn't work must not be used as an excuse to grant DOE and LANL a new Consent Order that preemptively surrenders enforcement authority. That clearly won't work if the goal is to	No change.

	compel genuine, comprehensive cleanup at LANL.	
Nuke Watch 2	**New Mexico Attorney General Approval Must Be Obtained** 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 provided the State of New Mexico with a covenant not to sue DOE on behalf of the State of New Mexico, not merely on behalf of the Environment Department. Nevertheless, there is no signature line for the New Mexico Attorney General in the proposed 2016 Consent Order. The Attorney General was an active participant, representing the People of New Mexico, in the 2005 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.	Yes – Section XXXIV
Nuke Watch 2	**The Consent Order cannot be open-ended** The proposed 2016 consent order would indefinitely extend the final compliance date for completing corrective action at the Laboratory, without the opportunity for a public hearing with formal testimony and cross-examination of witnesses. Any Consent Order for LANL cleanup must have a final compliance date to which both NMED and DOE and LANS agree to and are so bound. NMED must provide a 60-day public review and comment period, in addition to an opportunity for a public hearing about changes to Section XII of the 2005 Consent Order and the new final compliance	No change.

	date as required by state and federal regulations. See 40 CFR §270.42, Appendix I.A.5.b.	
WM	Enclosed in this letter are my comments concerning the 2016 proposed Order on Consent (proposed Consent Order) between the New Mexico Environment Department (NMED) and the U.S. Department of Energy (DOE) for the Los Alamos National Laboratory (LANL) Facility. My comments are submitted in response to the NMED's public notice on this matter issued March 30, 2016, and the notice extending the public comment period issued by the agency on May 16, 2016. While I sometimes offer suggestions for revisions to proposed Consent Order, I prefer it to be abandoned, and the existing, original Consent Order (2005) be retained. My preference is founded chiefly, but not entirely, on the basis that the proposed Consent Order weakens NMED's authority to require adequate and timely corrective action at LANL, and a complete replacement of the original Consent Order is unnecessary. Additionally, the proposed Consent Order, if finalized as written, locks NMED into a bad agreement for decades to come, eliminates public participation related to future modifications of the Order, and does not include requirements and schedules for all corrective action sites at LANL as required under 20.4.1.500 NMAC incorporating 40 CFR 264.101(a) and (b).	No change.
WM	None of my comments is meant to criticize the DOE (Respondent). I cannot blame them for attempting to reach an agreement (via the proposed Consent Order) that is in their best interests. Thus, where criticism is implied in my comments, it is directed solely at the NMED, which has the responsibility to ensure that the final Consent Order meets the intent of law, is adequately protective of human health and the environment, and serves the best interest of the people of New Mexico. Unfortunately, while the original Consent Order meets the latter criteria, its proposed replacement does not.	No change.
WM	You personally know me. As you are aware, I worked for the NMED for over 25 years, and only recently retired from the agency (at the end of 2015). For nearly all of those years of service, I worked directly for the NMED Hazardous Waste Bureau (HWB) or conducted work directly related to the business of the HWB (NMED	No change.

	DOE Oversight Bureau). For the last 14 years of my time at NMED, I was the Albuquerque Group Manager of the HWB's Permits Management Program. I was on the teams that negotiated the Sandia National Laboratories and the original LANL Consent Orders; both Orders are consequently similar, although there are some differences. I have served as an expert witness at public hearings and have presented at many public meetings on behalf of the NMED. Thus, whether or not the NMED agrees with my comments, my comments should be taken with careful consideration as I am undeniably qualified to offer opinions on this matter.	
WM	While I did not work directly on LANL corrective action, I had many occasions to discuss the progress of corrective action under the original Consent Order with my colleagues that were assigned to work on LANL. The original LANL Consent Order is voluminous and contains many prescriptive requirements related to sampling and analysis, investigation procedures, document contents, as well as other requirements. Such prescriptive requirements were a necessity as for decades Respondent and its contractors were submitting inadequate documentation in support of what were also inadequate investigations. The requirements in the original Consent Order set forth NMED's basic expectations on how to properly conduct investigations and remediation, and how to provide detailed, high quality plans and reports to demonstrate that adequate work had been or was scheduled to be done. Initially, Respondent failed to make deadlines under the original Consent Order, and the NMED demanded stipulated penalties in response. However, after a few years the Respondent did begin to make meaningful progress under the provisions of the original Consent Order. I was told by my colleagues that the quality of investigations had considerably improved, as well as reporting and the preparation of work plans, deadlines were being met, and as a consequence, the demand for new stipulated penalties for failure to meet deadlines had waned. Given this improvement, I can't help but question why NMED would want to completely replace the original Consent Order when clearly nothing was and is broken with the original Order. The original Consent Order had the desired effect that NMED wanted and needed -- Respondent was accomplishing timely and adequate corrective	No change.

	action at LANL for the first time.	
WM	As I noted above, according to my colleagues, everything was going great with LANL until Governor Martinez's administration interfered with the progress being made by invoking her "realignment of priorities". This interference is documented starting on the bottom of page 16 of the proposed Consent Order: *The proximity of the fire to above-ground stored wastes in TA-54 prompted New Mexico Governor Susana Martinez to request that the Respondent prioritize removing non- cemented above-ground wastes. The Respondent agreed to realign waste management priorities.*	No change.
WM	What isn't documented in the proposed Consent Order is that DOE did not have the funds to pay for the realignment. However, the Governor, through political pressure on the NMED, allowed the DOE to pay for the realignment using money that was supposed to be spent on corrective action required under the original Consent Order. As a consequent, NMED HWB staff were required by management to issue time extensions in lieu of stipulated penalties for failures of the DOE to now meet its commitments. The progress on corrective action at LANL that had been going so well under the original Consent Order virtually disappeared overnight.	No change.
WM	While it may appear that the original Consent Order is now no longer working, that would be an incorrect assessment due to disastrous effects of the Governor's "realignment of priorities", which led to the taking away of funding from LANL corrective action activities, and consequently, the end of making significant progress on corrective action at LANL.	No change.
WM	The realignment of priorities was unnecessary. NMED should make decisions based on regulatory requirements and science, not politics. Here, politics were clearly at play. DOE rightfully spared no expense to protect its properties (LANL) from the fire. That the fire burned much of the fuel that had accumulated on the ground suggests that another major fire could not likely occur for decades. There being no other risk drivers besides fire, there was no need to expedite waste removal at the expense of shutting down the corrective action project at LANL.	No change.
WM	Having no luck finding justification via a Fact Sheet for replacing the	No change.

	original Consent Order among the public notice documents on the web page, I reviewed the presentation slides given on May 18, 2016, to the Northern New Mexico Citizens Advisory Board (slides posted on NMED's web page). Slide 11, entitled *NMED Perspective*, seems to be intended to provide justification for full replacement of the original Consent Order, indicating that the proposed Consent Order focuses on accelerating cleanup, provides a plan for how/when all cleanup will be completed (with additional detail that it supports discussions concerning future funding levels for LANL), and that it enables success rather than to delay cleanup. None of these perspectives warrant changes to the original Consent Order. First, the original Consent Order already allows for accelerated investigations and cleanups (Sections VII.F). In all the years I worked for the NMED, the agency always encouraged and supported, when appropriate, accelerated investigation and cleanup of corrective action sites. Second, the proposed Consent Order does not provides a plan for how/when **all** cleanup will be completed. In the original Consent Order, there are nearly 100 pages devoted to establishing corrective actions at individual sites and sites within specific canyon watersheds, technical areas, and MDAs. Another 25 pages of schedules are found in Section XII of the original Order. However, the so-called plans in the proposed Consent Order Appendix B are often vague, as discussed below in Comment 70, and the milestones, the only enforceable schedules, are established for just some sites. Thus, the public cannot review and comment on enforceable schedules for all corrective action sites. Regarding LANL's funding levels, NMED technical staff never hear the end of complaints from responsible parties about having to spend their scarce money resources. However, risks to the public and the environment should drive cleanups, not whether LANL has the funds (more about this matter later). Opening the door to allow Respondent to use the lack of money as an excuse to delay corrective action will only result in Respondent not having money to meet its obligations (discussed more below). And finally, the delay in cleanup over the last 5 years or so is not related to a deficiency in the original Consent Order, but instead, is caused by the Governor's realignment priorities as discussed above. Bottom line is that original Consent	

	Order is adequate for the intended purpose, and until the Governor interfered, it was working well as originally designed and implemented. There is no need to waste NMED resources to create a new Consent Order. Just enforce the existing one after revising schedules as appropriate due to the delay caused by the Governor's realignment priorities.	
WM	The proposed Consent Order, as written, will not serve in the best interest of the people of New Mexico and should be abandoned. The existing, original Consent Order has worked well and would continue to work well, is a by far superior Order than what is now being proposed, has stronger enforcement provisions, and was prepared in negotiations with the intent to get the best agreement for New Mexico with respect to meeting the regulations and protecting human health and the environment. The proposed Consent Order, if finalized as written, will lock NMED into a bad deal for decades to come.	No change.
WM	In my opinion, you, Ms. Roberts, should have no involvement with this matter --- the preparation of a complete replacement of the existing LANL Consent Order. You worked for LANL just prior to your current position with the NMED, and at minimum, this gives the perception of a conflict of interest. I know you to be a good person, and I would not like to see your good reputation forever tainted. I call upon your management to excuse you from this matter, as they know, or should know, should be done.	No change.
WM	I cannot help but ask who prepared the proposed Consent Order because what is before the public is so bad, and so not in the best interest of New Mexico that it is shameful. The proposed Consent Order does not represent the high quality of a work product that normally would be produced by the NMED HWB. Because I worked for them up to the end of last year, I know that the leadership of the HWB has cumulatively decades of experience, that some of the HWB managers worked on the original Consent Order, and that they are highly competent, and have worked on LANL corrective action for decades. Furthermore, I know there are highly competent technical staff that currently work for the HWB, and competent staff that have considerable experience in writing permits and orders. I worked frequently at NMED over the past several years with several attorneys with the Office of General Counsel that I also know to be	No change.

	highly competent. So I ask -- did anyone from HWB actually participate from start to end in any meaningful way in the preparation of the proposed Consent Order? Did HWB try to assist but was ignored? Was the proposed Consent Order reviewed by the Office of General Counsel? Was counsel ignored?	
CCNS	The proposed Consent Order 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; it does not protect surface water, ground water and drinking water; it creates loopholes; 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.	No change.
CCNS	In addition, at the request of the Department of Energy (DOE) and Los Alamos National Security, LLC (LANS), the management contractor at LANL, (collectively the Respondents) the NMED has issued over 150 extension of time under the existing 2005 Consent Order. Some of the extensions have been renewed two or three times to the detriment of actual cleanup work being done. We ask: How and when will cleanup ever get done at LANL?	No change.
CCNS	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 – that was not met for a variety of reasons, including NMED granting over 150 extensions of time.	No change.
CCNS	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.	No change.
CCNS	CCNS and Gilkeson urge the Environment Department to conserve taxpayer resources and withdraw the proposed 2016 Consent Order. The Environment Department could effectively modify the 2005 Consent Order with an update of the Section XII	No change.

	cleanup schedules and a realistic final compliance/completion date that would lead to cleanup. Changing the final compliance/completion date is a major Class 3 permit modification request requiring the opportunity for a public hearing with direct testimony and cross-examination. 40 CFR §270.42, Appendix I.A.5.b	
CCNS	Concerned Citizens for Nuclear Safety (CCNS) is a non - governmental organization based in Santa Fe, New Mexico. CCNS formed in 1988 to address community concerns about the proposed transportation of radioactive and hazardous waste from LANL to the then proposed Waste Isolation Pilot Plant (WIPP). For the past 28 years, CCNS and our members who reside downwind and downstream of LANL have actively participated in NMED administrative permitting processes involving LANL initiated by the Hazardous Waste Bureau, Air Quality Bureau, Surface Water Quality Bureau and Ground Water Quality Bureau. Robert H. Gilkeson is an independent registered geologist and former contractor at LANL. His work included managing the installation of ground water wells under the NMED ordered 1995 Hydrogeologic Workplan. Mr. Gilkeson also wrote and contributed to many of the RCRA Facility Investigation reports for the LANL dumps that are the subjects of both the 2005 and proposed 2016 COC. CCNS and Gilkeson have been working together since 2004 to address LANL ground water and cleanup issues. Our experience addressing LANL cleanup issues uniquely qualifies us to participate formally in a public hearing about updating the 2005 COC or the proposed 2016 COC.	No change.
CCNS	It is unclear what regulatory authority the Environment Department is using to issue the proposed 2016 Compliance Order on Consent (COC) for public review and comment. Is the proposed 2016 COC 1. A modification of the 2005 COC? or 2. A revocation and reissuance of the 2005 COC?	No change.

	To support our concerns about what type of document the proposed 2016 COC is, just look at the first page. It does not contain a proper administrative pleading heading. It appears to be an agreement rather than an administrative order. It is unclear whether the NMED Secretary received information to cause a modification, or revocation and reissuance, or if both conditions exist. 40 CFR § 270.41. Neither the Public Notice No. 16-04, nor the proposed 2016 COC, provide the necessary information. Nevertheless, Sec. II *Purpose and Scope of Consent Order* of the proposed 2016 COC, states: "This Consent Order supersedes the 2005 Compliance Order on Consent…." "Supersede" means "to take the place of, replace or supplement." If the proposed 2016 COC is a revocation, then 40 CFR §270.41 applies. *See* 40 CFR §124.5(c)(2)) ("When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued"). Further, "If cause does not exist under this section, the [NMED Secretary] shall **not** modify or revoke and reissue the permit, except on the request of the Permittee." [Emphasis added.] 40 CFR §270.41. Further, it is unclear whether DOE (the Respondent in the proposed 2016 COC) and Los Alamos National Security, LLC (LANS) (collectively, DOE and LANS' predecessor (the University of California) are the Respondents in the 2005 Consent Order) requested the revocation and reissuance of the 2005 COC. If Respondent did, what is the date of their request? Was the request posted to LANL's Electronic Public Reading Room? How was the public notified of the request? The question remains open: What entity initiated the process to	

	create the proposed 2016 COC? This question must be answered before any public hearing is held on this matter. If the proposed 2016 COC is a modification of the 2005 COC, then 40 CFR §270.42, Appendix. I, A.5.b "Schedule of compliance: (b) Extension of final compliance date" applies. In this case, the rules for a Class 3 permit modification apply. 40 CFR §270.42(c). As far as we understand, the Respondent DOE did not submit a Class 3 permit modification request. Id. If the Respondent DOE did submit a Class 3 permit modification request to the NMED Secretary, the Public Notice No. 16-04 would have reflected that fact. It does not. If it is a Class 3 permit modification, the NMED Secretary should deny the request because the condition of the modification fail to protect human health and the environment. NMED has not clearly provided the necessary information about the regulatory authority it is using to issue the Public Notice No. 16-04 to begin the public review and comment of the proposed 2016 COC. NMED must, therefore, retract the proposed 2016 COC, clarify their authority to issue the document and resubmit it for at least a 60-day public comment period.	
CCNS	The following general comments support the CCNS and Gilkeson 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. **DOE is in the process of hiring a new cleanup contractor for LANL and recently issued a Request For Proposals (RFP), which states:** The total estimated value of the contract is approximately $1.7B [billion] over the prospective ten-year period of performance, including option periods.	No change.

	The ten-year contract amount of $1.7 billion would average to $170 million per year, well below the current proposed budget of $189 million for Fiscal Year 2017 (which begins October 1, 2016). Before a contract is even signed, the proposed 2016 Consent Order fails to increase the LANL cleanup budget. The new cleanup contract is inadequate and is set up to fail under either the 2005 Consent Order or a proposed 2016 Consent Order. Further, there is no mechanism in the proposed 2016 Consent Order to increase, or to even maintain, a stable annual cleanup budget.	
CCNS	**The Consent Order Cannot Be Open-Ended** The proposed 2016 Consent Order would indefinitely extend the final compliance date for completing corrective cleanup action at LANL, without the opportunity for a public hearing with formal testimony and cross-examination of witnesses. Any Consent Order for LANL cleanup must have a final compliance/completion date to which NMED, DOE and LANS agree to and are so bound. 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 as required by state and federal regulations. *See* 40 CFR §270.42, Appendix I.A.5.b.	No change.
CCNS	**New Mexico Attorney General Approval Must Be Obtained** 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	Yes – Section XXXIV

	Mexico with a covenant not to sue DOE on behalf of the State of New Mexico, not merely on behalf of the Environment Department. Nevertheless, there is no signature line for the New Mexico Attorney General in the proposed 2016 Consent Order. The Attorney General was an active participant, representing the People of New Mexico, in the 2005 Consent Order administrative process. The Environment Department must ensure that the New Mexico Attorney General is consulted, and his approval obtained, before any Consent Order is finalized	
CCNS	**New Mexico Deserves Better** 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 and its management contractor, in this case, LANS, 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, and because NMED has not provided the necessary authority for issuing the proposed 2016 COC, CCNS and Gilkeson urge the New Mexico Environment Department to withdraw the proposed 2016 COC. 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 resources while creating	No change.

	hundreds of high-paying cleanup jobs. It would be a real win-win for New Mexicans.	
MH	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.	No change.
MH	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.	No change.
MH	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.	No change.
MH	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.	No change.
MH	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.	No change.
MH	The Environment Department is abdicating its responsibility to protect human health and the environment as required by the federal RCRA	Yes – Section XXXIV

	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.	
MH	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.	No change.
EV	I am requesting the N.M. Environment Dept. to give up the proposed 2016 Compliance Order on Consent released for public comment on March 30, 2016 and keep current the 2005 Consent Order and revised Section XII cleanup schedule and final compliance date. I attended the meeting last week at the N.M. Public Library sponsored by Nuclear Watch and heard the concerns expressed. Thank you for attending with others from the N.M. Environment Dept. I was impressed by people on both sides of the issue. Some of the concerns expressed concerning the proposed 2016 Compliance Order were lack of public participation provisions, a more detailed schedules to be adhered to, enforceable deadlines, have a final compliance date for LANL cleanup and many others. I am just an average citizen with no expertise in these matters, but I have kept up with the dangerous amounts of hazardous, toxic and nuclear materials stored up there especially in Area G. And I remember the two forest fires that came very close to the these highly toxic areas. Please continue to monitor DOE's activities and policies and	No change.

	thank you for all your good work.	
MM	As a tax-paying citizen, US Public Health physician and active member of Physicians for Social Responsibility, I felt compelled to submit comments on the NMED proposal to withdraw the 2005 LANS Consent Order, and replace it with a watered down version in 2016. The new Proposed Order requiring clean-up of LANL toxic sites would, instead of holding LANS' 'feet to the fire' to meet existing benchmarks and deadlines, allow the Lab to enjoy an open-ended arrangement whereby LANS apparently has until the end of time to comply. This is utter nonsense, especially when one considers that they've stalled the cleanup efforts for one reason or another since before the first 2005 Consent Order. The net effect is a 'get out of jail free' pass. The Public has a legal right to expect NMED's Resource Protection Division to do its job to help protect all citizens of New Mexico. Further, DOE and LANS have collectively a legal if not a moral obligation to perform under existing rules. By abdicating its responsibility to the environment it "lives in", the Lab on the Hill puts every person living in the State and beyond it borders at risk for serious health consequences from decades-long toxic pollution of air, water and soil. The minority populations, whose historic Pueblos and Hispanic communities surround LANS, are particularly affected health-wise. NMED, do the right thing and stop giving the Lab an' EZ-pass' yet again so it can continue to ignore clean-up orders on the weakest of excuses. At this rate, areas of LANL/LANS should soon be Federally designated 'brownfield' CERCLA sites.	No change.
SGR	I am writing today to express my support for the Revised Consent Order for environmental cleanup at Los Alamos National Laboratory (LANL). As you know, this is an issue that impacts myself and my constituents directly, as we live within a short distance of the nuclear waste that has been stored and generated at LANL. Additionally, I represent a number of people both in Los Alamos and in the surrounding counties of my legislative district—Rio Arriba, Sandoval and Santa Fe—that have contracts with LANL specifically for environmental remediation work.	No change.

	So on behalf of all of my constituents, I would like to advocate for a safe, thorough and timely process of remediation for that waste.	
SGR	I believe that the Revised Consent Order will provide an effective framework for ensuring that the cleanup work at LANL is carried out safely and methodically, while allowing for continued monitoring and oversight by the proper regulatory bodies, namely the New Mexico Environment Department.	No change.
SGR	Historically, we have witnessed the results of pressured timelines and unrealistic goals in environmental remediation in the human error that led to the Waste Isolation Pilot Project truck fire and subsequent radiological release from a storage drum in 2014. It is my highest priority to support a regulatory procedure for cleanup that will ensure we do not repeat those occurrences.	No change.
SGR	Finally, in addition to advocating for the safety of my own family and constituents and for participation from the public, I would like to ensure that local contractors that do the work of environmental remediation are considered in the Revised Consent Order. I would like to recommend that no less than 30% of all environmental remediation be set aside for local, small business subcontractors.	No change.
SGR	For the reasons stated above and others, I stand in support of the Revised Consent Order. A considered regulatory structure such as the RCO will ensure the health, safety, and economic wellbeing of the local community.	No change.
BM	Just a note to observe that the draft Cleanup Consent Order shortchanges the stated goals and missions of the NMED. It allows an opt-out of the cleaning up the legacy waste that has been on the schedule for decades. The reasons, “impracticability” or cost, are real snow-screens that undermine the good faith that the department has built up with the community over the years. I would like to see a more positive, firm, commitment in the revised Draft for viable, healthy actions that would move these long-standing difficulties ahead in good faith. Thank you for your time.	No change.
Santa Clara	On behalf of Santa Clara Pueblo, I submit the following comments on the Revised Draft LANL Consent Order. As you review these	No change.

	comments, please bear in mind the deep connection Santa Clara Pueblo has to the Pajarito Plateau, a connection which pre-dates the existence of Los Alamos National Laboratory ("LANL") or even the Manhattan Project by quite a few centuries. The modem-day boundaries of Kha' Po Oweengeh, or Santa Clara Pueblo, include over 54,000 acres of land. That acreage includes some of our traditional lands that we have fought to regain, but does not include all of our aboriginal territory. The Pajarito Plateau contains many areas of importance to our people and any clean-up that is not protective of traditional uses of this profoundly holy place for us affects the cultural integrity and health of the Santa Clara Pueblo people for current and many future generations to come.	
Santa Clara	I very much appreciate meeting you and having the opportunity, along with leadership and representatives of Cochiti Pueblo and Jemez Pueblo, to be briefed about the Revised Draft LANL Consent Order by New Mexico Environment Department ("NMED") Secretary Flynn on May 24th. Having that direct dialogue and strengthening our government-to-government collaboration is important.	No change.
Santa Clara	Please know that we, at Santa Clara Pueblo, do appreciate Secretary Flynn's desire to try to set up a different structure for the Revised Draft LANL Consent Order that has some flexibility in it in the hopes that it will be more effective for garnering results when dealing with new information or funding constraints, but we are deeply concerned that the new structure does not provide sufficient incentives for the Department of Energy ("DOE") to prioritize funding the clean-up of legacy (and continuing and more newly-discovered) wastes at LANL and negates the ability to have meaningful public input and meaningful government-to-government consultation about when and how remediation will occur.	No change.
Santa Clara	While it appears that the listing of the different "campaigns" in Appendix C contains a general estimate of years that may be needed to complete each given "campaign," unlike the previous	No change.

	Consent Order issued in 2005, there does not appear to be any overarching schedule for completing all of the LANL legacy waste clean-up work which could be enforced by NMED. The new structure of the Revised Draft LANL Consent Order appears to us to indefinitely extend the final compliance date for completing corrective action at LANL.[2] We understand the desire for setting achievable goals and having some flexibility to adjust the goals but that does not mean an overarching compliance timeline should be scrapped altogether, especially since the annual planning process for setting "milestones" appears to us to be subject to constant negotiation and re-negotiation (a true moving target in the traditional sense of that phrase, not as the term "target" is used in the Revised Draft LANL Consent Order).	
Santa Clara	Santa Clara Pueblo concludes these comments with a reminder that the area surrounding LANL has myriad cultural resources of great significance to Santa Clara Pueblo's continued traditions. It is therefore essential to the continuation of our way of life that as many of the lands as possible both at and near LANL are truly remediated and restored. Moreover, ensuring the highest levels of clean-up and accountability through a new Consent Order will benefit not only Santa Clara Pueblo but all future generations of New Mexicans.	No change.
DR	Just because you don't ***want*** to hear or consider what the public has to say, that doesn't mean you don't have an obligation to inform them and receive and consider public comment. RCRA, under which you work, requires that you include the public when making these kinds of decisions. Traditionally, even if you let us speak or comment, you don't actually take what we say into consideration. This has got to change and the consent order is a particularly important issue for you to hear about from the public. You may feel that you have met your minimal obligations to inform and hear from the public, but you have not. You need to include public participation into every step of the consent order. Just because you talk with carefully selected groups and native communities, doesn't mean it's okay to leave the rest of the public completely out of the loop.	No change.

	LANL has the most people of color surrounding it of any DOE site. You specifically have been remiss in informing and including poor, rural and so-called minority people. Just because one community directly next to the Lab is white, doesn't mean that these large numbers of people of color and poor people aren't being disparately impacted by the Lab. Clearly, under this new consent order, they will be disparately impacted forever.	
DR	That's because your new consent order is garbage. Basically you are telling DOE and LANL that they can do whatever they want on whatever time schedule they like and if it is, Gee Whiz, too hard or too expensive, well just forget it. Meanwhile, they want to ramp up pit production, making more transuranic waste which you are happy to let them store in tents along with the exploding drums that you let them create and still store in tents out on the mesa in a wildfire zone. You have stated in writing that you are in partnership with DOE and you sure aren't acting like you are in partnership with the people surrounding the Lab as you have given away your entire authority to regulate them in this new consent order. This is unacceptable.	No change.
DR	It is not the public's fault that the old consent order didn't work. It was your fault for giving them 150 extensions. Start doing your job.	No change.
DR	Finally, we need true clean up at the Lab and they need to stop further operations until they get their waste under control. They have learned nothing from the debacle of the explosion at WIPP. And neither have you. But never mind. The worse you act (and this new consent order is really bad acting) the more fodder for your bad publicity. It is my joy and purpose in life to make sure everyone in the State knows what you are doing (or not doing). So if you're not going to do your job of protecting human health and the environment, just keep creating those sound bites. Thanks.	No change.
San I	The Pueblo de San Ildefonso is a federally recognized tribe with a unique relationship with the Los Alamos National Laboratory (LANL) simply because of its proximity to the LANL facility and the cultural and traditional significance of the surrounding area. The Pueblo shares a common boundary and its ancestral homeland	No change.

	with LANL and has borne the brunt of many of LANL's past disposal activities that have contaminated the canyons surrounding LANL property and the hydrologic zones underlying LANL. As a result, the Pueblo de San Ildefonso has a vested interest in the cleanup requirements for LANL's legacy waste sites under the proposed March 30, 2016 Draft Consent Order (DCO). This is especially important because the DCO will be the only means of enforcement for the legacy waste cleanup outside of those areas covered under the Hazardous Waste Facility Permit.	
San I	The Pueblo appreciates that you and New Mexico Environmental Department Secretary Flynn met with Pueblo representatives to discuss NMED's approach for the DCO. We had an open and frank discussion about NMED' s proposed cleanup approach in light of limited funding and the Pueblo's concerns as an impacted community.	No change.