



State of New Mexico  
House of Representatives  
Santa Fe

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**COMMITTEES:**

Vice-Chair: Energy, Environment & Natural Resources  
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Secretary James C. Kenney  
New Mexico Environment Department  
Harold Runnels Building  
1190 St. Francis Drive, Suite N4050  
Santa Fe, NM 87505

Dear Cabinet Secretary Kenney,

I hope this correspondence finds you well. I currently serve as Chairwoman of Radioactive and Hazardous Materials Committee. At a recent hearing, I heard some concerns expressed about Los Alamos National Laboratory, and the history of two consent orders for Laboratory cleanup.

The original consent order for investigation and cleanup of legacy pollution at Los Alamos National Laboratory was executed on March 1, 2005. It included a comprehensive schedule for completing all investigation and cleanup work, with dozens of specific deadlines for cleanup of all the material disposal areas and other contaminated sites at the Laboratory. Stipulated penalties applied if deadlines were missed without good cause. Final cleanup was to be completed by December 2015. Under the 2005 Consent Order, the U.S. Department of Energy (DOE) and its contractors, under Environment Department oversight, made considerable progress in achieving cleanup. Among other things, the investigations led to the discovery of the plume of hexavalent chromium contamination in groundwater beneath the Laboratory. The Environment Department diligently enforced the 2005 Consent Order, collecting stipulated penalties from DOE for unexcused missed deadlines. These penalties were directed into the New Mexico Hazardous Waste Emergency Fund (NMSA § 74-4-8), which is used to respond to chemical spills and fund the State share of Superfund cleanups.

But in 2011 and 2012, the cleanup process slowed down. Cleanup at the Laboratory became a lower priority for the Environment Department, and for DOE. The Environment Department granted more than 150 extensions of time to meet 2005 Consent Order deadlines, often without a finding of good cause. DOE missed many deadlines without any extension, thus becoming liable for hundreds of millions of dollars in penalties owed to the State.

In 2016, the Environment Department and DOE executed a new consent order, which stated that it superseded the 2005 Consent Order. The 2016 Consent Order did away with the detailed schedule. Under the 2016 Consent Order, DOE and the Environment Department meet once a year and decide on a schedule for the coming year – and no more. That schedule is largely determined by DOE's budget for that year. Cleanup at the Laboratory has slowed markedly, with no end in sight. Moreover, the 2016 Consent Order forgave DOE for all of the penalties owed to the State for missed deadlines; DOE paid nothing.

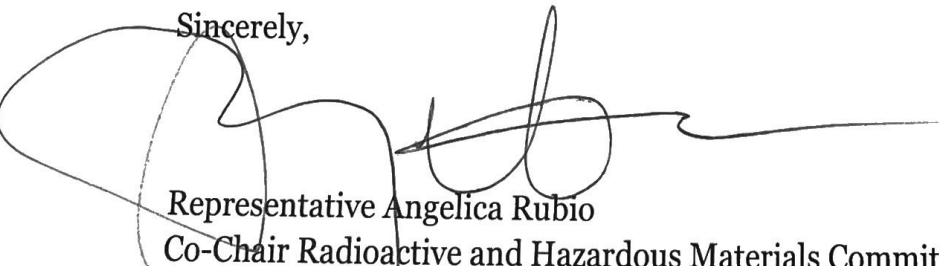
In addition, I understand that the 2016 Consent Order was procedurally flawed because it did not allow an opportunity for a public hearing on the cleanup schedule.

I recognize that the issues of the penalties owed to the State, and the procedural validity of the 2016 Consent Order, are currently in litigation in federal court. I was surprised to learn that the Environment Department is siding with DOE in this litigation.

I believe the Environment Department needs to reconsider the 2016 Consent Order. One option would be to renegotiate the 2016 Consent Order and include a comprehensive, detailed schedule, subject to stipulated penalties. The disputed penalties that are currently the subject of litigation could be used as leverage to encourage DOE to negotiate.

I would be interested in hearing your views on these issues. Thank you for your consideration.

Sincerely,



Representative Angelica Rubio  
Co-Chair Radioactive and Hazardous Materials Committee

cc: Stephanie Stringer, Director, Environmental Protection Division, NMED