

General

LANL Order, PMP, Letter of Intent

**Testimony
to the
Senate Energy and Natural Resources Committee
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by
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Greetings. My name is Peter Maggiore and I am the Cabinet Secretary of the New Mexico Environment Department (NMED).

First, I would like to thank Energy and Natural Resources Committee Chairman, Senator Bingaman, and the members of the Committee for inviting me to attend, and to present the State of New Mexico's perception of the proposed, accelerated cleanup initiative at the U.S. Department of Energy (DOE) facilities in New Mexico.

As the members of the committee know, the DOE and its predecessor agencies have had a tremendous presence in New Mexico since the time of the Manhattan Project. New Mexico hosts a great deal of DOE activity at Los Alamos National Laboratory (LANL) and Sandia National Laboratories (SNL) in Albuquerque. Additionally, New Mexico is host to the DOE's Waste Isolation Pilot Plant near Carlsbad - the nation's only transuranic waste disposal site.

New Mexico has worked closely with every DOE administration since the inception of the Environmental Management program, commonly referred to as EM, to help ensure the cleanup of the legacy contamination from the nuclear weapons program. Although New Mexico does not have the magnitude of environmental contamination that is present at the former production facilities (including Hanford, Rocky Flats, Savannah River, Oak Ridge), there is still significant legacy waste cleanup work to be accomplished.

Throughout my tenure as Secretary, DOE funding for the Environmental Management programs at New Mexico facilities has not been robust, particularly in comparison to DOE facilities in other states. Despite working with DOE in a collaborative, common-sense manner to achieve legacy waste cleanup, over the past several years, New Mexico's DOE Facilities have experienced declining EM funding. This has resulted in significant schedule extensions for closure of legacy waste sites.

In 1998, shortly before I was appointed as Cabinet Secretary, my predecessor signed onto an Environmental Stewardship Vision with DOE and its contractors, as well as the U.S. Environmental Protection Agency. The Environmental Stewardship Vision stated: "we will complete all environmental restoration and stabilization efforts and ensure long-term maintenance and monitoring programs are in place at all New Mexico DOE facilities by 2006, SNL (Sandia National Laboratories) by 2001 and LANL (Los Alamos National Laboratory) by 2006." In early 2002, just four years after signing the Environmental Stewardship Vision, the DOE's projected completion dates had extended out to 2009 for Sandia, and to 2040 for LANL.



These are 8-year and 34-year extensions, respectively. The projected timeframes are unacceptable to the State of New Mexico and speak to significant problems with funding DOE's Environmental Management program. These funding inadequacies have been worsened by the President's recent budget.

The continual delays in completing New Mexico's scheduled cleanups coupled with the obvious inadequate funding to meet commitments at New Mexico DOE facilities, has forced NMED this year to change its regulatory stance with DOE facilities. We have recently issued a draft Corrective Action Order to LANL (and will soon do the same at Sandia) under New Mexico's RCRA authority to compel more timely cleanup and closure of legacy waste sites. It is apparent to New Mexico that virtually all of the environmental cleanup at major DOE sites is driven, to some extent, by compliance agreements, be they tri-party agreements, consent decrees, compliance orders, or settlement agreements. Simply put, sites with these types of compliance agreements are more likely to receive funding from DOE Headquarters. I do not feel that it is appropriate for New Mexico's environment to suffer because the Environment Department has made every effort to cooperate with DOE.

Having presented that background information, I would like to discuss New Mexico's perception of DOE's accelerated cleanup initiative. First, I believe that the Bush Administration's proposed EM funding levels for last fiscal year were far too low. Obviously, members of this committee and congress in general agreed with that assessment, as you increased the level of funding substantially for FY 02. I thank you for your support of critical EM cleanup activities. The President's budget this year has roughly the same level of funding as was proposed last year, but contains an additional \$1 billion in a so-called Cleanup Reform Account available to projects deemed worthy by DOE Headquarters.

New Mexico does not blindly equate DOE EM program success exclusively with funding amount. Accelerated cleanup challenges us to part from this "money equals success" paradigm. Accelerated cleanup brings with it the unique benefit of incorporating collaboration, streamlining and technological innovation. I stand in support of these added benefits.

New Mexico has provided input on the accelerated cleanup proposals starting in early spring. To date, we have found the process of developing the proposals to be helpful and I believe it has been an excellent planning exercise. DOE has actively sought New Mexico's feedback, and has incorporated many of our suggestions into the cleanup proposals. Interestingly, agreement has been quickly reached between the state, DOE, and EPA as to what are the highest priority activities to be undertaken. So, in general, New Mexico agrees with the goals and proposed timeline of the accelerated proposals, which we understand are in the process of receiving DOE headquarters approval.

In order to "qualify" for funding consideration, states were asked to sign a "Letter of Intent" (LOI) with DOE. Notably, DOE's contractors were not signatories to the LOI; this in spite of the fact that the contractors developed the proposals, and are expected to carry out the work. New Mexico's LOI, signed by the New Mexico Environment Department, DOE, and EPA, describes the collective commitments needed to achieve cleanup at New Mexico legacy waste sites. The New Mexico LOI as been criticized by some activist groups as setting the stage for DOE to do

less cleanup at its sites; but I do not agree with that analysis. I view the LOI merely as a gesture to work collaboratively towards cleaning up legacy waste sites as quickly as possible.

The bottom line of the New Mexico accelerated cleanup proposals is an additional \$62 million above the president's budget of \$77.7 million. (Both amounts are exclusive of WIPP.) Unlike some other states where funding will not change significantly over last year's levels with the advent of the Cleanup Reform Account, New Mexico should see a substantial increase in EM money. At Sandia and LANL the combined increase is \$28.5 million, or 26% above FY 02 levels (\$139.7M versus \$111.2M); coupled with the new paradigm described previously, I am confident that this increased funding is enough to make a large difference in the rate of progress of cleanup at those facilities.

New Mexico does have concerns about how DOE may be viewing closure of its legacy waste facilities. Specifically, it is imperative that accelerated cleanup not be interpreted to mean less cleanup. I believe I may be speaking for all states with DOE facilities when I say that New Mexico expects DOE to perform the maximum amount of cleanup practicable before declaring a site "closed." The complete removal of waste and contamination from DOE sites should remain a priority.

Finally, I want to emphasize the need for a robust, long-term stewardship plan for DOE facilities. Such a plan does not exist now, yet is a critical element in the closure of all DOE sites. New Mexico has serious concerns about DOE's commitment to the development and maintenance of such a plan -- one that needs to be agreed to by both state regulators and DOE. In instances where waste and contamination will remain at DOE sites, the use of federally financed, state-managed trust funds (or other suitable fiscal instrument) should be a critical element or a tool available to states. Such a tool would help to ensure that states have the financial resources to protect public health and the environment from residual hazards.

This concludes my testimony. Thank you again for the opportunity to speak. I would be happy to answer any questions that you may have.