

General



SUSANA MARTINEZ  
Governor

JOHN A. SANCHEZ  
Lieutenant Governor

NEW MEXICO  
ENVIRONMENT DEPARTMENT

*Office of the Secretary*

Harold Runnels Building  
1190 Saint Francis Drive (87505)  
P.O. Box 5469, Santa Fe, NM 87502  
Phone: (505) 827-2855 Fax: (505) 827-2836  
www.nmenv.state.nm.us



DAVE MARTIN  
Secretary

BUTCH TONGATE  
Deputy Secretary

September 7, 2012

The Honorable Jeff Bingaman  
U. S. Senator  
703 Hart Senate Office Building  
Washington, DC 20510

The Honorable Tom Udall  
U. S. Senator  
110 Hart Senate Office Building  
Washington, DC 20510

The Honorable Ben Ray Lujan  
U. S. House of Representatives  
330 Cannon House Office Building  
Washington, DC 20515

Dear Senator Bingaman, Senator Udall and Congressman Lujan:

Recently, I was informed by officials with the Office of Environmental Management (EM) and the National Nuclear Security Administration (NNSA) that anticipated FY 13 Department of Energy (DOE) funding for cleanup activities at Los Alamos National Laboratory (LANL) will be insufficient to achieve our mutually agreed upon goals. On behalf of the New Mexico Environment Department (NMED), I express my strong frustration and disappointment with this recently delivered information.

As you may recall, the requirements for executing the cleanup of legacy waste at LANL was set forth in an Order on Consent that was signed in March of 2005 by officials representing the interests of New Mexico, DOE NNSA, DOE EM and the LANL Directorate. The Order on Consent is a legally binding agreement that was jointly developed by the parties in order to terminate litigation in Federal Court. To that end, the U.S. Department of Justice provided legal counsel to DOE during the negotiation of the Order on Consent and concurred with the final settlement conditions. All of this is to say that we have a



legal instrument in effect that outlines in considerable detail the nature and extent of work to be done, including critical milestones and a specific completion date of 2015.

Earlier this year, the State and NMED agreed to make adjustments to some of the deadlines set forth in the Order on Consent in order to focus on the highest priority, highest risk activities. These priorities include acceleration of transuranic (TRU) waste shipments from LANL to the Waste Isolation Pilot Plant (WIPP), ground water protection efforts near the LANL site, and ensuring that storm water runoff from LANL and surrounding areas does not adversely affect drinking water supplies.

LANL needs approximately \$239 million to be in compliance with this recently agreed upon Framework Agreement which defers several major milestones initially set forth in the Order on Consent. To the Administration's credit, this funding level was proposed in the FY 13 budget request and represents some \$50 million increase from the FY 12 actual funding level. The lowest funding level proposed for FY 13 was the House mark of \$219 million.

In recent discussions with NNSA and EM officials, I was informed that because of the anticipated Continuing Resolution (CR), expected to be passed by Congress sometime in September, when taken along with the current sequestration provision contained in the 2010 Budget Control Act, LANL should expect a funding decrease of at least 10% below FY 12 level of \$188 million.

When I was in Washington, D.C. a few weeks ago, I strongly urged NNSA and EM to request an exception within the pending CR for LANL cleanup funding. Apparently they did request an exception for LANL and other sites in the DOE Complex. It is my understanding that the Office of Management and Budget (OMB) summarily denied every one of the DOE requests. I am not aware of the arguments advanced by DOE for the exceptions, and I do not know what reason OMB provided for denying the requests. But it appears that the federal government is not living up to its commitments to provide the necessary resources to reduce and eliminate the contamination at LANL, and this is another example of the federal government not recognizing its obligation to New Mexico and its citizens. This is particularly disturbing given that New Mexico is the willing host state for WIPP, the nation's only geologic waste disposal repository. Given WIPP's role in providing DOE with a destination for TRU waste disposal across the complex, it is puzzling to me why DOE-NNSA is unable to provide adequate funding to expeditiously clean up legacy waste from a national laboratory in WIPP's own home state.

I find this funding situation even more egregious because historically DOE has not been willing to find the needed funding to remediate LANL in a timely manner. In fact, NNSA/LANL was a serious under performer with regard to TRU waste disposition until New Mexico literally provided a framework to improve efficiencies for them. After that framework was put into place, NNSA has continually asked my office to renegotiate the existing Order on Consent but we have been unwilling to do so because that is our only leverage to ensure progress. Moreover, NNSA seems to have enough surplus funding to develop a so-called 50-year LANL environmental stewardship plan that is taking significant current cleanup dollars to formulate. Why would NNSA even try to present a 50-year environmental vision

when they are unable to tell me with any certainty what the remediation schedule will be six months from now?

Based on the above, I request your assistance in providing, at a bare minimum, the House mark of \$219 million for the LANL cleanup in FY 13. Anything below this level will put NNSA remediation commitments to NMED in jeopardy and will force my office to consider a different strategy going forward in how we enforce environmental compliance. I do not believe fines are a good way to drive compliance, but when my office is essentially ignored after all of our proactive efforts to help get LANL into compliance with an agreement that DOE signed, I have little recourse remaining. Continued, bad faith action by DOE that fails to provide a respectable level of reciprocity will be dealt with accordingly. I also want to make it very clear that I will be unwilling to consider any renegotiation of our current Consent Order, as being asked for by NNSA, until I see some sustainable funding profile for LANL. We believe we have done our part, and then some. We have gone the extra mile for DOE (NNSA and EM) on several fronts, including greatly modifying the LANL remediation schedule in their favor and considering options to increase the efficiencies for waste shipments to the WIPP from sites across the DOE complex. It is time for DOE, OMB, and Congress to show some modest respect for the law in this case, and to recognize the disproportionately high contribution that New Mexico has made and is making to the waste management mission at DOE. I appreciate your support for this cleanup effort in the past and hope that the minimal amount of funding can be identified in the FY 13 budget to allow sufficient progress.

If my office can provide you with any additional information or direction on where the roadblocks appear to reside, please do not hesitate to contact me directly.

Thank you for your consideration of my request.

Sincerely,



Dave Martin ✓  
Cabinet Secretary