

Permit

August 1, 2002

By email to: James_Bearzi@nmenv.state.nm.us



James P. Bearzi, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6303

Re: Los Alamos National Laboratory Facility Order

Dear James:

Concerned Citizens for Nuclear Safety (CCNS) makes the following comments on the New Mexico Environment Department's (NMED's) May 2, 2002 draft order issued to the Los Alamos National Laboratory (LANL):

1. CCNS is pleased that the NMED Secretary has issued the determination and that the NMED has prepared the draft order and released it for public comment. However, the draft order does not state when, where and how the public may participate in and comment on investigation and cleanup processes that will be performed by the Facility and reviewed by the NMED. The NMED should prepare a public participation section for the draft order, based on Environmental Protection Agency guidance as referenced in the Attorney General of New Mexico's July 30, 2002 comments, and release it for a 30-day comment period. After receiving and incorporating the comments, the NMED then should release the final order.
2. Santa Fe County should be included as an entity surrounding LANL in all descriptions of the Facility. §§II.A.3, IV.B.1.a.
3. If the Respondents, U.S. Department of Energy (DOE) and the University of California (UC), fail to respond in any way to any of the requirements found in the order, the NMED Secretary should quickly commence civil litigation against the Respondents under NMSA §74-4.10.1.
4. The definition for a Material Disposal Area (MDA) should explain more fully why closure or post-closure care requirements may not apply to an MDA. §III.B.
5. The Respondents should be required to maintain paper copies of all "documents, data, and other information required to be prepared under this Order" for 100 years, a time period discussed in the context of long-term stewardship and long-term environmental stewardship. The NMED should require Respondents to keep electronic copies, with a properly maintained and operating electronic reader. For example, if



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Respondents recorded information on an 8-track, then Respondents should be required to maintain an 8-track player in order to provide access to the information.

6. CCNS supports a strong NMED enforcement program. However, over the years, the enforcement program has suffered because of inadequate funding. The NMED must charge the Respondents fees that will adequately fund a strong enforcement program.
§III.M.

7. All information required to be posted on the Facility website should be accessible and able to be downloaded by older computer systems without crashing the systems.
§IV.A.2.

8. The NMED should be more specific about the requirements for the background groundwater concentration study required by the Order. Is the Respondent required to take background samples from each well, at each level in the alluvial aquifer, intermediate zone, and regional aquifer groundwater? The final order should state where and the frequency of sampling in order to establish an adequate background groundwater data set. §§IV.A.3.d.

The final order should include a requirement for a background surface water concentration study that includes the specifics stated above. The study should include the perennially-flowing surface water, snowmelt run-off, stormwater run-off, and artificial sources of stormwater, including outfalls.

9. All quarterly or periodic monitoring results should be posted on the Facility website when submitted to the NMED, with appropriate qualifiers. §IV.A.3.f. Respondents should be required to state the applicable cleanup standards or other regulatory criteria with their postings. §VII.D.2.9.

10. CCNS strongly supports the development of a "return of the lands used by the Facility to 1942 background levels," also known as a "pre-LANL," or "sustainable homesteader" or "sacred" scenario for the use in cleanup levels, screening levels, reporting level, migration pathways, and risk assessments. Public participation in the development of such a scenario should be provided for in the final order.

11. The NMED should define "technically infeasible." §VII.C.1. The NMED should provide "technically infeasible" criteria in the draft order and submit such language to the public for a 30-day comment period.

12. The reference to §VII.C.4.b is unclear. §§VII.D.2.12, VII.D.4.b.

13. The threshold criteria should cite regulations or standards or provide definitions. §VII.D.4.a.

14. After the "...this report is true, accurate, and complete" language in the remedy completion report certification, the NMED should insert the following: "... and that if

Facility classifiers have changed any information that forms the basis for the report, that that information would not change the final determination." §VII.E.6.a.

15. The final order should include a provision prohibiting the Facility from destroying any documents or samples, including drilling core, until receiving the approval to destroy from the NMED.

Thank you for your careful consideration of CCNS's comments. Should you have any questions or comments, please contact me.

Sincerely,

Joni Arends
Waste Programs Director