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N N M C A B



Northern New Mexico Citizens' Advisory Board
A U.S. Department of Energy Site-Specific Advisory Board
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September 30, 2004

James P. Bearzi, Hazardous Waste Bureau,
State of New Mexico, Environment Department:

The Northern New Mexico Citizens' Advisory Board (Board) has prepared this letter in response to the September 1, 2004 issuance of the New Mexico Environment Department (NMED) / Los Alamos National Laboratory (LANL) Draft Order on Consent (the Order). The Order provides for a 30-day review and written comment period. As a federally chartered site-specific advisory board it is our responsibility to thoroughly review and comment upon the Order. Please consider this letter the Board's formal response and comment.

Upon careful review, the Board has found seven areas of major concern in the Order. They are summarized as follows:

1. The Board recommends that more public involvement opportunities be provided in the Order. While Section III.W.5 reserves procedural rights for the public, this Order does not provide the needed public involvement in the LANL cleanup process – from start to finish. **This Board, representing the interest of public trust and accountability, advises the NMED and the respondents to adopt a comprehensive Community Relations Plan.** An 'across-the-board' Community Relations Plan, in addition to Section III.W.5, VII.D.7, and VII.E.4, would provide for public participation opportunities throughout the multifaceted stages of compliance defined in the Order. Further opportunities for public involvement are defined as including (1) **annual public meetings** to inform the public on progress made under the Order, and (2) **comment opportunities** on all aspects of the LANL cleanup process.
2. **The Board is concerned about whether there are sufficient resources available to the NMED to ensure that timely and technically adequate reviews are made for each required approval in the Order.** The Board notes the proposed schedule in the Order appears to be based on the level of resources available to NMED two years ago. Considering the increased procedural complexity of the Order and the added impact of economic inflation, the Board is concerned that the NMED will not have the resources to meet the proposed schedule. In addition, the Order does not



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address the accountability of the NMED for failing to meet deadlines. However, the Board notes that the LANL can be severely fined and penalized for failing to meet state imposed deadlines.

3. **The Board recommends that the Order include a ‘summary table’ of the ‘target review completion dates’ for each activity specified in Section IV and Section XII of the Order.** Specifying a target review time frame would show a stronger commitment, by the NMED, to the spirit and principle of the Order. The board is confident that ‘target review completion dates’ would not diminish the Department’s responsibility and authority to ensure that said reports were complete and consistent with state laws and regulations as well as the other requirements set out in the Order.
4. The Board finds that there is no provision in the Order for field design change procedures based on unanticipated conditions encountered during the implementation of an approved plan. Section X does not contain any provisions for notification to the NMED regarding any changes in investigation, sampling methods or procedures during field activities. **To ensure procedural clarification, the Board hereby advises the NMED to include a statement in the Order defining how changes in conditions and unexpected results will be managed in the field and reported to the Department.** There should also be some specification of what changes are considered minor and can be reported in a subsequent investigation report and what changes are considered major that would require work to cease and desist, a work plan revision, resubmission and re-approval.
5. The Board expects to see the implementation of the Order conducted in a transparent and publicly open manner. **Therefore, this Board strongly recommends that the NMED require the respondents to implement a commercially available Geographic Information System (GIS) Database available on the web for review by the NMED and the public.** This GIS Database should include available data regarding the site together with all the data generated under the Order. An available GIS Database will also facilitate the NMED’s review of the work and the public may gain confidence in the proposed remedies when they have ready access to review all the available data from the site.
6. The Board recommends clarification on Section III.W.6, Contingencies in the Order. Of particular concern to the Board is when and how the Order can automatically become ‘vacated’ and return to the original permit. Section III.W.6 lists three conditions under which this Order will be ‘vacated’. The Board cannot assess the likelihood that any of these contingencies may occur; therefore it views this section with some alarm. **If the Order is ‘vacated’, the Board is skeptical that the listed remedies will actually guarantee the orderly and timely cleanup that this Order necessitates. To ensure that cleanup continues under some binding agreement, it would be prudent to strengthen and clarify the wording in Section III.W.6.**
7. **Where multiple techniques or methodologies are available for field investigations, such as drilling and well construction, the Board recommends that NMED specify and make available a ‘prioritized list of method**

alternatives'. This 'prioritized list of alternatives' would be based on the history of the impact of each alternative on a representative type of samples to be collected (soil, rock, groundwater, etc.) and the types of analyses and tests to be performed. This prioritization would assist the LANL in the development of work plans more immediately acceptable to the NMED.

On behalf of the Northern New Mexico Citizens' Advisory Board, we congratulate you on the completion of such a complex, aggressive and cooperative endeavor negotiated between the NMED, the LANL, the DOE, and the University of California. We appreciate this opportunity, as an appointed citizen board, to recommend these seven policy issues be placed into or clarified within the Order.

The Board wishes to take this opportunity to thank NMED Secretary Ron Curry and Hazardous Waste Bureau Chief James Bearzi for providing the recent public meeting held to explain the Order. The Board thought the meeting was well conducted, and Mr. Bearzi's candid and forthright presentation was appreciated. In addition, the Board notes the Department's prompt and generous action in providing the NNM CAB with copies of the Order for review.

Sincerely,



Timothy A. DeLong, Chair, NNM CAB

Cc:

Senator Jeff Bingaman
Senator Pete Domenici
Representative Tom Udall
Representative Heather Wilson
New Mexico Governor Bill Richardson
Secretary Ron Curry, New Mexico Environment Department (NMED)
Sandra Waisley, EM-30.1, DOE HQ, Forrestal
Frederick Dowd, DOE, Public Participation
Director Pete Nanos, Los Alamos National Laboratory
Ed Wilmot, Manager, Los Alamos Site Office, Department of Energy
Beverly Ramsey, Division Leader, RRES, LANL
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