

Permit

October 1, 2004

By email to: hazardous_waste_comment@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: Comments on the Proposed Order on Consent for Los Alamos National
Laboratory
EPA ID No. NM0890010515

Dear Mr. Bearzi:

As a New Mexico resident for the past 23 years, I am very appreciative of the significant environmental regulatory practices that NMED is planning to enforce through the Proposed Order on Consent for Los Alamos National Laboratory. For several decades I have had great concern that the health of the environment, its wildlife and ultimately, our communities, are endangered by the negligent and significant disposition of nuclear and hazardous waste at the Los Alamos National Labs (LANL) facility and technical areas. I appreciate the many years of committed research, development and negotiation that NMED has invested into the Proposed Order on Consent for Los Alamos National Laboratory. I commend you, Secretary Ron Curry and your dedicated staffs on this protective order for New Mexico's environmental and public health.

I also acknowledge that a public process is not required, but that NMED has taken an important step in strengthening the democratic process by providing the draft Consent Order to the public for comment, which will lengthen the time before the Consent Order (CO) is finalized. Environmental justice demands public participation mechanisms in the final CO. NMED has spent considerable effort to listen to the concerns of communities impacted by industrial activities across the state and will hopefully make recommendations for increasing public participating in the regulatory activities of the state. Providing public participation mechanisms within the final CO would be an important test case for NMED.

A public process must be provided for in the final CO in the following areas:

1. Section III.G. Stipulated Penalties, generally.
2. Section III.G.3. Stipulated Penalty Amounts, including reductions and waivers of the stipulated penalties.
3. Section III.H.2. Examples of Force Majeure.



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4. Section III.Y.1.b. Land Transfer of Facility Property in Fee, a 60-day period of time for NMED to determine whether corrective action measures are required before land is transferred. If NMED does not respond in a timely manner, it "will be deemed ... that no additional corrective action measures are necessary given the transferee's intended use of the property."
5. Section III.Y.2.b. Land Transfer of Facility Property to Another Federal Facility, same as 4 above.
6. Section V. Investigation for other SWMUs and AOCs.
7. Section VII.A through E. Corrective Measures. There should be a mechanism for the public to review and comment on all documents submitted by the Respondents in this section, including the Interim Measures Work Plan, Risk Assessment, Corrective Measures Evaluation Report, Corrective Measures Implementation Plan, and the Remedy Completion Report.
8. Section VII.F. Accelerated Cleanup Process. There should be a mechanism for the public to review and comment on all documents submitted by the Respondents in this section, including the Accelerated Corrective Measures Work Plan, Accelerated Corrective Action Work Plan and the Remedy Completion Report.
9. Section VIII.B.1. Soil Cleanup Levels. (Please see specific comments below.) 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.
10. Section VIII.E. Requests for Variance from Cleanup Goal or Cleanup Level. (Please see specific comments below.)

I am generally concerned about provisions which, if the NMED does not respond within a certain amount of time that items such as requests for extensions of time are automatically granted. Of course, there is a balance that is obtained during the closed-door negotiation process. However, from the public's viewpoint, these provisions are not acceptable at this time. These provisions would be acceptable if the HWB was fully funded and staffed, but this is not the case. I strongly urge that for these provisions, a minimum of 30-days must be allowed for NMED to respond.

My specific comments are as follows:

- 1). Section III.F. Binding Effect. I concur with CCNS' recommendation for the addition of a sentence in this section or another that reflects a requirement that the environmental records in the possession of the University of California must be turned over to DOE or the new contractor. There have been cases within the DOE complex

where records are destroyed when a new contractor takes over a management contract at a facility. Due to the uncertainty associated with the LANL contract, NMED should be proactive in safeguarding the historical environment records at LANL.

2). Section III.G.1. Submittals Subject to Stipulated Penalties. I concur with CCNS' recommendation that there should be a mechanism for the public to participate in the meeting that is scheduled to take place prior to or on June 30 of each year to determine which of the Respondent's submittals are subject to stipulated penalties. Furthermore, there should be a mechanism for the public to provide input into the decision making process, including the public's viewpoint about DOE/LANL/UC's history of compliance with the CO.

I believe that there should be no limit on the number of submittals which shall be subject to the stipulated penalties. We must protect water quality and one way to do that is to not restrict NMED in its ability to imposed stipulated penalties on the polluters at LANL.

3. Section III.G.3. Stipulated Penalty Amounts. I support CCNS' position that there should be a mechanism for the public to participate in the NMED's decision making to reduce or waive stipulated penalties. The purpose of fines and penalties are to change the way the institutional operations impact the environment, hopefully for the better. The public must be provided a mechanism to participate in this decision making process. In the alternative, the parties could agree to withdraw the final two sentences of this section.

4. Section III.H.2. Examples of Force Majeure. I believe that there should be a public participation mechanism for participating in the review by NMED about the claim of Respondents that a force majeure had occurred.

5. Section III.Q. Record Severability. I wholeheartedly disagree with the agreement of the parties that Respondents are required to keep records, documents, data and other information prepared for the CO for only ten years after receiving the notice of the CO termination. The Respondents should be required to keep all of these materials until such time as it is determined that the site should be closed, such as was done at the Fernald site near Cincinnati, Ohio.

6. Section III.U. Enforcement. I strongly endorse the statement that the state supports citizens' suits to enforce the requirements of the CO.

7. Section Y. Land Transfer. I strongly object to the inclusion of this entire section. The final CO should state the statutory and regulatory bases for this section. Land transfer should not be based on the intended use. In order to protect public health in the environment, now and in the future, all land scheduled to be transferred must be cleaned up to the condition it was in before the Respondents began discharging, emitting or burying materials so that the land is now contaminated.

8. Section III.Y.1.b. Department's Determination. I am very concerned that this section reflects a rush to transfer contaminated land to new owners. I object to the statement in this section that "Respondents will endeavor to conduct any additional corrective action requirements identified by the Department prior to transfer." I believe that all corrective action requirements must be completed prior to any transfers.

9. Section III.Y.2.a. Notice and Meeting for Transfer of Control of Facility Property to Another Federal Facility. This section should state the consequences if DOE does not notify NMED at least 120 days prior to the proposed transfer. With all the other work that NMED is charged with under the CO and upcoming Permit, I strongly support that there should be some consequences to not notifying NMED at least 120 days prior to the proposed transfer. A 120-day period allows time for the public to participate and comment about the proposal.

10. Section IV.A.5.b. Testing Hazard Zones. I concur with CCNS' concern about the deferral of investigation and corrective action for sites within the Testing Hazard Zones and the fact that DOE's written determination is not subject to the dispute resolution provisions of the CO. With data indicating the high explosives have been found in the springs at Ancho Canyon, CCNS' concerns about the amount of decision making DOE has regarding source contamination is highly warranted.

11. Section IV.B. Canyon Watershed Investigations. I support CCNS's belief that any characterization wells that are drilled should be drilled in such a way that the well can be transferred to the groundwater monitoring program. The Respondent should prepare a historical investigation report for each canyon watershed to provide a baseline of information for the public.

12. Section VII.A. Erosion Control and Monitoring. Under this section, corrective measures may be required for any SWMU or AOC where NMED determines there has been a release. Discovering the release may be the result of surface water monitoring data, a requirement found in the draft Corrective Action Order, but omitted from the CO. The public was provided the opportunity to comment on the draft Corrective Action Order. Now, there is no opportunity to comment on any changes, additions or deletions of the monitoring requirements. I strongly urge the need for public comment on the draft Federal Facilities Compliance Agreement (FFCA) between EPA Region VI and DOE and the University of California regarding surface and storm water monitoring.

13. Section VII.D.4.b.v. Cost as a factor for the Remedial Alternative Evaluation Criteria. The cost evaluation should include the capital costs and operation and maintenance costs now, in 5, 10, 15, 25 and 50 years into the future, all based on their present net present value. In many instances, it is a more efficient use of taxpayer funding to cleanup now rather than monitoring over a long period of time. Respondents should provide a complete analysis of the projected costs so that NMED may make an informed decision about cleaning up now or monitoring into the future and the uncertainties associated with long-term monitoring.

Thank you for again for your committed efforts to bring public interest into this critical environmental and public health regulatory agreement.

Sincerely,

Kimi Green
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