

Permit

ENTERED



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GOVERNOR

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March 6, 2006

Joni Arends  
Executive Director  
Concerned Citizens for Nuclear Safety  
107 Cienega Street  
Santa Fe, NM 87501

Dear Ms. Arends:

Thank you for your comments on the proposed changes to the March 1, 2005 Order on Consent. The responses to your comments and the schedule can be found on the New Mexico Environment Department's website at [www.nmenv.state.nm.us/hwb/lanlperm.html](http://www.nmenv.state.nm.us/hwb/lanlperm.html), Order on Consent.

Should you have any questions, please feel free to contact me at (505) 428-2535.

Sincerely,

A handwritten signature in black ink, appearing to read "John E. Kieling".

John E. Kieling  
Manager  
Permits Management

JEK:dxg

file: Reading and LANL General Consent Order

31304



Comments on the proposed March 1, 2005 Order on Consent schedule changes were received from the following parties on February 27, 2006:

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#### Comment #1

Tables XII-1, 2 and 3 must indicate the reason for the "new due date" or the "new notice date." As stated in Section III.M.2 of the Order, the Department may "approve the document as submitted, modify the document and approve it as modified, or disapprove the document." If the Department disapproves a document, the Respondents are given time to make changes. The Tables should reflect the reason for the new due date or new notice date. We suggest the use of a footnote. The use of a footnote to indicate the reason for the delay on the Tables will prove to be an invaluable tool for the public in our review of the cleanup process.

We are very concerned about the proposed FY2007 budget cuts for cleanup at LANL. The Respondents must submit, without unnecessary delay, documents that meet the requirements of the Order to assure prompt approval by Department. We have no desire to witness precious resources squandered on repeated exchange of documents between the Respondents and Department.

#### Response #1

The purpose of the Tables in Chapter XII is to present submittal and response dates for some of the major documents expected to be generated under the Consent Order. The reasoning behind the dates, revised or otherwise, is not appropriate for the inclusion in the tables or Consent Order. The reasons for each change to the schedule are well documented in the Administrative Record.

The use of footnotes on the proposed tables to present the reasons for changes would be unwieldy. Based on occurrences over the first year of the Consent Order, NMED anticipates that additional reasons for changes to the schedule will need to be added as the schedule evolves. In general, most of the changes are due to the following reasons:

- If the Permittees requested an extension to a due date and it was granted, the due date and the Department's notice date was extended by a period equal to the time requested.
- If the Department did not notify the Permittees by the notice date, the due date and notice date for subsequent documents were automatically extended by a period equal to such additional time. (See Table XII-3, column labeled "Actual Notice Date")
- If the Permittees submitted an Aggregate Area Work Plan, a due date and notice date were assigned for the Investigation Report. Due dates for these plans were not included in the Consent Order.
- If the Permittees submitted an Accelerated Corrective Action Work Plan, a due date and notice date for a Remedy Completion Report was assigned. Due dates for these plans were not included in the Consent Order.

In addition, solid waste management unit (SWMU) 73-002 was added to the schedule as a new document. NMED agreed to the Permittees request to separate the site from the Pueblo Canyon Aggregate Area Work Plan, where it was originally to be included. The SWMU 73-002 investigation work plan was assigned the same due date and notice date as the Aggregate Area Work Plan.

#### Comment #2

Footnote 4 of Table XII-2 and Footnote 5 of Table XII-3 are confusing because some of the rows under the "Deliverable" or "Site" columns, respectively, indicate a due date for an Investigation Report, while others do not. We suggest the footnotes be expanded to indicate that the Department will approve the schedule for submitting the Investigation Report after reviewing the Investigation Work Plan. Further, the footnote should indicate that upon approval, the Department will incorporate the Investigation Report schedule into the Tables.

Our general comment involves the status of the website for the Order documents. We are very close to the one-year anniversary of the Order. We remain concerned about the delays in posting the electronic copies of the documents on the Department's website. We urge the Respondents and the Department to resolve the funding issues at the earliest opportunity so that the public may assume more effective participation in the Order process.

#### Response #2

Footnote 4 of proposed Table XII-2 and Footnote 5 of proposed Table XII-3 apply only to the Aggregate Areas that have been identified by the Permittees and are documented in the "Aggregate Areas List; Maps of TAs, SWMUs/AOCs" (LA-UR-05-6234/ER2005-0226). As part of each work plan for an Aggregate Area, the Permittees must propose a schedule for the investigation activities and a date for submitting the investigation report. As part of its review and approval of the work plan, NMED determines if the proposed date is appropriate, as required in Section V.H of the Consent Order. NMED may either approve the proposed date or select an alternate date if one is warranted. All other site investigation reports on the proposed tables have an associated due date that was either previously documented in the March 1, 2005 Consent Order or was assigned following Section VII.F of the Consent Order which provides guidance on the accelerated cleanup process.

It was NMED's intent to post all documents related to the Consent Order on its website for more convenient access by the public. This would include all of the documents submitted by the Permittees and any related NMED correspondence. Currently, NMED's website has the MDA G Investigation Report. NMED's website does not currently have the capacity to post all of the documents. However, all of the documents are available at the Hazardous Waste Bureau and are available for electronic copying.

The funding issues in the commenters' comment is related to the scanning of the LANL Administrative Record into a searchable database that would also be accessible to the public. The funding for the Administrative Record project is pending the Department of Energy's approval. NMED still plans to implement the project when funding is approved.