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State of New Mexico
OFFICE OF THE STATE AUDITOR

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Butch Tongate
Cabinet Secretary
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive, Suite N4050
Santa Fe, New Mexico 87505

Dear Secretary Tongate:

The Office of the State Auditor (Office) received information raising concerns about the New Mexico Environment Department's (Department) settlements involving Los Alamos National Laboratory (LANL) and the Waste Isolation Pilot Plant (WIPP). In particular, that the Department unnecessarily forgave tens of millions of dollars in civil penalties related to various waste management violations and repeated missed cleanup deadlines by the Department of Energy (DOE) and its contractors.

For example, in December 2014, the Department announced a record \$54 million in civil penalties related to WIPP's and LANL's handling of transuranic waste that resulted in an underground fire and radiological release at the WIPP facility. However, as a result of subsequent negotiations and settlements with DOE, it is the Office's understanding that the Department did not actually collect any of these penalties under the final 2016 agreements. We recognize that DOE did agree to fund various LANL/WIPP initiatives classified as supplemental environmental projects (SEP) to resolve the claims, such as road and water infrastructure projects, monitoring, enhanced training for local responders, and an improved emergency operations center. While it is common for penalties to be reduced in negotiated settlements, and for penalties to be reduced in consideration of supplemental environmental projects, considering the seriousness of the violations and the clarity regarding responsibility for the violations, it appears highly unusual that the Department would not collect any penalties under these circumstances.

Both the Department's and Environmental Protection Agency's (EPA) penalty policies appear to stipulate that regardless of the costs of SEPs a substantial minimum penalty is still appropriate. Supplemental environmental projects may reduce a final penalty but they do not generally completely eliminate all penalties. Questions have also been raised about whether the SEPs under these agreements are adequately related to the violations that occurred and whether DOE was already required to perform some of these projects due to preexisting legal obligations.

The 2016 settlement agreement between DOE and the Department regarding longstanding contamination at LANL also raises concerns. While DOE and its contractor had incurred millions

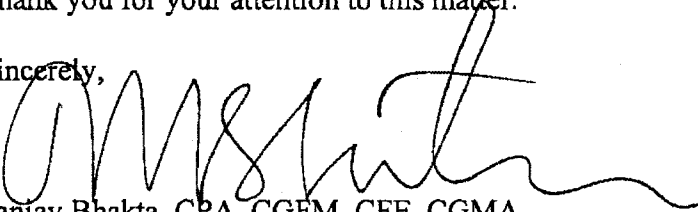


of dollars in potential civil penalties related to missed cleanup deadlines, in revising the 2005 Compliance Consent Order, the Department also completely forgave the collection of these penalties while also loosening the compliance deadline framework.

The assessment and actual collection of penalties is not only important in terms of fiscal policy. From an enforcement perspective, the threat of the imposition of civil penalties for violations of laws and regulations aimed at protecting health and safety plays a critical role in deterring future noncompliance. The Department should evaluate whether its current approach, as exemplified by these recent agreements, is consistent with the State's fiscal and enforcement objectives as well as existing state and federal penalty policies.

Thank you for your attention to this matter.

Sincerely,



Sanjay Bhakta, CPA, CGEM, CFE, CGMA
Deputy State Auditor