

Talking Points on the NMED's Corrective Action Order against LANL

- On November 26, 2002, the New Mexico Environment Department's (NMED's) Hazardous Waste Bureau released a final "Corrective Action Order" mandating the Los Alamos National Laboratory (LANL) to fulfill a very comprehensive investigation of soil contamination and potential groundwater contamination. At the same time NMED issued a "Finding of Substantial and Imminent Endangerment" because of the environmental risks posed by past lab activities.
- The following (among other things) prompted NMED's Finding and Order:
 - Endless delays by LANL to voluntarily complete and furnish to NMED agreed upon reports and data.
 - A 33% drop over three years in funding for LANL's Environmental Restoration Program.
 - A chronic tendency by LANL to tackle the easiest cleanup projects (and thereby claim public relations success) while avoiding the more intractable cleanup jobs.
 - The prospect of potential contaminant migration in the aftermath of the Cerro Grande Fire, which could have been preemptively avoided had the lab effectively cleaned up in the past.
 - Increasing evidence of groundwater contamination, which until six years ago the lab completely dismissed as even being a possibility.
- **What's wrong with the Order?**
 - It is more than a decade late in coming.
 - Most importantly, it does not mandate actual cleanup at the lab. It is, in effect, a glorified information request, albeit very comprehensive and with binding legal weight.
 - There are no provisions that require NMED to consider public comment.
 - NMED can often be dysfunctional. Top level positions are subject to political appointment. NMED is chronically underfunded and understaffed.
 - It is not yet concretely known whether ex-DOE Secretary Gov. Richardson will encourage or impede implementation and enforcement of the Order (however, initial indications are favorable). The Order could also be negatively impacted by unanticipated actions by the State legislature or the federal congressional delegation.
 - Before leaving office, former NMED Secretary Pete Maggiore signed New Mexico onto a fairly vague "Letter of Intent" formulated by DOE. NMED maintains that the Letter doesn't really bind it to anything substantive. However, it is clear that DOE thinks that it binds NMED (and is acting accordingly) to what the lab's plan of (non)cleanup is. In contrast, the present NMED Secretary Ron Curry has described LANL's cleanup plan as "not relevant" from the Department's regulatory perspective.
 - Future cleanup depends on future designations of declared "land use" at the lab. That will be a big issue unto itself. There are also truck-size loopholes, such as when cleanup is "technically or economically infeasible."
 - If DOE and University of California (LANL's manager) lawsuits against the Order and Finding (see below) prevail, it could seriously rollback the authority of all states over DOE sites.
- **What's right with the Order?**
 - It is the first truly significant sign of a more aggressive regulatory attitude by the NMED against LANL.
 - The Order proscribes that future cleanup will be completed to bring human health risks down to a risk factor of 10^{-5} (one potential fatal cancer in a population of 100,000), which is pretty stringent. However, as a cautionary note, that risk level has everything to do with future designated land use. The Order assumes a "resi-

dential standard” as a default, but obviously that is not what the lab will argue for.

- Environmental organizations always have inherent limits to their power and influence. It is critical that we, in effect, get others to do our work, especially entities that are invested with some authority by law. Despite the lack of proscribed public process NMED appears to be pretty accessible to input on the Order.

- If the Order survives the pitfalls described above it probably will lead to State-mandated cleanup, either through subsequent orders and/or the pending renewal of LANL's Resource Conservation and Recovery Act permit.

- We shouldn't have to wait too long to see where this Order is really headed. It requires LANL to submit detailed information on a nasty hazardous/radioactive waste dump called Material Disposal Area (MDA) C at Technical Area-50. There is presently a 120 day court-ordered stay on the Order, set to expire in mid-May. MDA C deliverables should be forthcoming as soon as mid-July and act as a good test of the future course of the Order.

- The Order has led to an increasingly adversarial relationship between DOE/LANL and NMED. That is arguably to the good.

- If NMED prevails against the DOE/UC lawsuits that will then be good national legal precedent.

- In a heavy-handed response to the Order and Finding, DOE and UC have filed six legal proceedings in federal and State courts to overturn the Finding and to obtain a stay against the Order. Moreover, they are making sweeping arguments that, if successful, would rollback the State's authority to a time when the DOE was almost completely self-regulating.

- The most notable issue is that LANL is arguing that NMED has no jurisdictional authority over “mixed” wastes, that is wastes that are both hazardous and radioactive. Hazardous wastes, as defined by law, are essentially non-radioactive wastes that are carcinogenic or otherwise harmful to human health and the environment. Radioactive wastes are, of course, also carcinogenic and potentially harmful, but the Atomic Energy Act grants almost sole jurisdiction over those wastes to the DOE. Jurisdiction over hazardous wastes was granted by the Resource Conservation and Recovery Act to the EPA, which in turn delegated authority to the states. In 1994 Congress expanded authority over hazardous wastes to also include mixed wastes. It is essentially this evolution of the states' authority to regulate mixed wastes at DOE sites that LANL is now seeking to overturn (and with a virtually unlimited war chest supplied by taxpayers).

Nukewatch Priorities Vis à Vis the LANL Corrective Action Order

- Our top priority to begin with is to see to it that NMED fully implements and enforces its Corrective Action Order against Los Alamos National Laboratory.

- A directly related priority is to support/pressure NMED from caving in and to fight the good fight while fending off the DOE/UC legal challenges.

- Another priority is to guard against any political interference against the implementation and enforcement of the Order.

- Our ultimate priority is to see to it that this Order actually leads to real, State-mandated cleanup at the lab. More specifically, we need to make sure that the lab's idea of “accelerated cleanup” (i.e., cap and cover and walk away from comprehensive cleanup) is trumped by the State.

--Jay Coghlan