

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

<p><b>NUCLEAR WATCH NEW MEXICO,</b></p> <p>Plaintiff,</p> <p>vs.</p> <p><b>UNITED STATES DEPARTMENT OF ENERGY, and LOS ALAMOS NATIONAL SECURITY, LLC,</b></p> <p>Defendants,</p> <p>and</p> <p><b>NEW MEXICO ENVIRONMENT DEPARTMENT,</b></p> <p>Intervenor.</p>	<p>Case No. 1:16-cv-00433-JCH-SCY</p>
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**DEFENDANT LOS ALAMOS NATIONAL SECURITY, LLC'S  
MOTIONS TO DISMISS PLAINTIFF'S FIRST AMENDED COMPLAINT  
OR ALTERNATIVELY FOR COURT ABSTENTION**

## MOTIONS TO DISMISS

Defendant Los Alamos National Security, LLC (“LANS”) hereby moves to dismiss the First Amended Complaint, ECF No. 30 (“Complaint”), in this action pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure (“FRCP”) and further alternatively moves that, if the Court does find it has jurisdiction, the Court abstain from adjudicating, and instead dismiss, all Claims for Relief in the Complaint.

The grounds for the motion to dismiss are as follows:

1. Pursuant to FRCP 12(b)(1), the Court lacks subject matter jurisdiction of the claims in the Complaint on the following grounds:
  - (A) All Claims for Relief in the Complaint have become moot;
  - (B) Plaintiff lacks standing under Article III of the United States Constitution to maintain any Claims for Relief in the Complaint;
  - (C) The First Claim for Relief is barred because Plaintiff did not provide the mandatory 60-day advance notice of this claim before filing the Complaint as required for this citizen lawsuit under the Resource Conservation and Recovery Act (“RCRA”); and
  - (D) The Third Claim for Relief is barred because the Court lacks subject matter jurisdiction to adjudicate the validity of the Compliance Order on Consent issued by the New Mexico Environment Department (“NMED”) on June 24, 2016 (“2016 Order”).
2. Pursuant to FRCP 12(b)(6), the following Claims for Relief in the Complaint fail to state a claim upon which relief can be granted:
  - (A) Plaintiff’s Third Claim for Relief fails to state a cognizable legal claim because Plaintiff is not entitled to a declaratory judgment that the 2016 Order is invalid; and
  - (B) Plaintiff’s Fourth Claim for Relief for attorneys’ fees and costs is a remedy (already included within the Prayer) and not an independent and cognizable legal claim.

LANS’s motion for Court abstention and a dismissal of the Complaint is based on the

doctrines of primary jurisdiction and Burford Abstention. NMED has actively exercised jurisdiction for decades over the remediation activities at Los Alamos National Laboratory and it has the technical expertise necessary to determine appropriate remediation approaches, priorities and deadlines. In light of NMED's expertise and ongoing exercise of regulatory authority, the risk of conflicting orders by NMED and the Court and the availability of State court remedies, the Court should abstain from adjudicating, and instead dismiss, this case.

Pursuant to the Court's Local Rule of Civil Procedure § 7.1(a), LANS's counsel conferred with Plaintiff's counsel regarding these motions. Plaintiff's counsel confirmed that Plaintiff will oppose any motions to dismiss the Complaint.

These motions are based on these Motions, the accompanying Memorandum of Points and Authorities filed concurrently herewith, the Request for Judicial Notice and accompanying Declaration of Timothy A. Dolan with attached documents filed herewith, upon all pleadings, files and records herein, and upon such matters and argument as may be presented to the Court at or before a hearing of these motions.

Dated: August 31, 2016

FARELLA BRAUN + MARTEL LLP

By: /s/ Paul P. Spaulding  
Paul P. Spaulding, III

Attorneys for Defendant LOS ALAMOS  
NATIONAL SECURITY, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on August 31, 2016, a true and correct copy of the foregoing was served via the Court's electronic system upon the following counsel of record:

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