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Nuclear Watch NM Gives Notice of Intent to Sue Over Lack of Cleanup at the Los Alamos Lab

Today, Nuclear Watch New Mexico notified the Department of Energy (DOE) and the Los Alamos National Laboratory (LANL) that it will file a lawsuit over their failure to meet cleanup milestones under a “Consent Order” governed by the New Mexico Environment Department. Formal notice is required before a lawsuit can actually be filed, which NukeWatch intends to do within 60 days or less. The New Mexico Environmental Law Center is representing NukeWatch in this legal action to enforce cleanup at LANL.

Jay Coghlan, NukeWatch Executive Director, commented, “The nuclear weaponeers plan to spend a trillion dollars over the next 30 years completely rebuilding U.S. nuclear forces. Meanwhile, cleanup at the Los Alamos Lab, the birthplace of nuclear weapons, continues to be delayed, delayed, delayed. We are putting the weaponeers on notice that they have to cleanup their radioactive and toxic mess first before making another one for a nuclear weapons stockpile that is already bloated far beyond what we need. Real cleanup would be a win-win for New Mexicans, permanently protecting our water and environment while creating hundreds of high paying jobs.”

Last week Nuclear Watch NM broke a [story](#) on how LANL and DOE have formally given the green light for new underground facilities to expand the production of plutonium pits (the fissile triggers of modern H-bombs) from the currently approved level of 20 pits per year to 80. In all, upgrades to existing plutonium facilities at LANL and the construction of two underground “modules” that can be added to later for yet more production will cost at least \$4 billion. The environmental impact statement for a previously proposed Walmart-sized plutonium facility (canceled because of costs that exploded up to \$6.5 billion dollars) documented that not a single new Lab job would be created because it would simply relocate existing jobs. Full cleanup, on the other hand, would be labor intensive and create hundreds of high paying jobs for several decades.

Every year the estimated cost of nation-wide “environmental liabilities” from past nuclear weapons research and production, currently \$298 billion, outpaces the annual levels of environmental restoration funding actually spent, even though those estimated liabilities don’t include full cleanup to begin with. At the same time, one multi-billion dollar DOE cleanup project after the other fails, for example the \$13.5 billion Waste Treatment Plant at the Hanford nuclear reservation, the multi-billion dollar Waste Isolation Pilot Plant in southern New Mexico (closed because of a ruptured radioactive waste barrel from LANL), and the estimated \$2.6

billion spent to date for incomplete cleanup at LANL. As an example of local impacts, during major stormwater events the City of Santa Fe has to close water diversion on the Rio Grande that can supply up to 15 million gallons per day of drinking water because of plutonium contamination in Los Alamos Canyon. Meanwhile, nation-wide, thousands of sick Cold War workers and downwinders from nuclear weapons tests await long delayed health benefits and compensation.

LANL is key to the trillion dollar rebuilding of nuclear forces as the premier nuclear weapons design lab and the nation's sole production site for plutonium pit triggers, the most critical nuclear weapons components. Funding for DOE nuclear weapons programs is nearly double historic Cold War averages, with around \$1.5 billion spent annually at LANL alone. In contrast, funding for Lab cleanup remains flat at around \$185 million per year, with only approximately a third going to actual cleanup (one-third goes to pensions and another third to safeguarding improperly prepared radioactive waste barrels destined for the now-closed WIPP). New Mexico Environment Department (NMED) officials have publicly stated that around \$250 million per year is needed for effective cleanup at LANL.

The 2005 Consent Order required DOE and LANL to investigate, characterize, and clean up hazardous and mixed radioactive contaminants from 70 years of nuclear weapons research and production. It also stipulated a detailed compliance schedule that the Lab was required to meet. Ironically, the last milestone, due December 6, 2015, required a report from LANL on how it successfully cleaned up Area G, its largest waste dump. However, real cleanup remains decades away, if ever. The Lab plans to "cap and cover" Area G, thereby creating a permanent nuclear waste dump in unlined pits and shafts, with an estimated 200,000 cubic yards of toxic and radioactive wastes buried above the regional groundwater aquifer, four miles uphill from the Rio Grande.

In the past the New Mexico Environment Department had repeatedly stated that it would release a revised Consent Order with new compliance dates before the end of 2015. Last November NMED Secretary Ryan Flynn said that a draft revised Consent Order would not be released until settlements were finalized over LANL violations of waste handling procedures that led to the closure of WIPP. Those settlement negotiations are still ongoing, leaving the Consent Order governing cleanup at the Lab in legal limbo.

Under typical hazardous waste handling permits, federal regulations require that an extension of a final compliance date include "an opportunity for a public hearing at which all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing and to examine witnesses testifying at the hearing." While the 2005 Consent Order is not a permit per se, it nevertheless explicitly incorporated the public process requirements of a federal hazardous waste permit. Therefore, Nuclear Watch New Mexico believes that any revised Consent Order requires an opportunity for meaningful public participation during its negotiation, leading to a public hearing should there be any unresolved issues, a position which so far NMED has opposed.

Scott Kovac, Nuclear Watch NM Research Director, said, "DOE, LANL and NMED have had four years to involve the public in revising Consent Order cleanup decisions and compliance

dates at the Lab, but yet they seem to have ignored the final deadline. Northern New Mexicans want meaningful input into cleanup decisions at LANL. NukeWatch believes that a rigorous cleanup schedule must be stipulated from the beginning in any revised Consent Order, and that the Lab must be held accountable every step along the way for getting the necessary funding and doing the work on time. We insist upon meaningful public participation and dates certain for compliance milestones. Cleanup at the Los Alamos Lab cannot be open-ended or it will never be accomplished.”

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Nuclear Watch New Mexico’s Notice of Intent to Sue is available at

<http://nukewatch.org/importantdocs/resources/NukeWatch-NM-NOI-to-DOE-and-LANS-20160120.pdf>

Budget data are from the Department of Energy’s annual Congressional Budget Requests.

The current estimate of \$298 billion to cleanup past nuclear weapons research and production comes from the DOE Agency Financial Report for Fiscal Year 2014. Even that figure does not come anywhere close to full and complete cleanup, but instead often involves “cap and cover” and leaving nuclear wastes permanently in place.

The quote concerning the need for a public hearing was incorporated into New Mexico state law NMSA 1978, §74-4-4.2(H) (2006).