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**Nuclear Watch NM Files Lawsuit
Over Lack of Cleanup at the Los Alamos Lab;
NM Environment Dept. Forgoes Nearly \$300 Million in Penalties**

Santa Fe, NM - Nuclear Watch New Mexico has filed a lawsuit in federal court against the Department of Energy and Los Alamos National Security LLC (LANS), the for-profit operator of the Los Alamos National Laboratory, over their failure to meet cleanup milestones under a 2005 “Consent Order” they agreed to with the New Mexico Environment Department. The New Mexico Environmental Law Center is representing NukeWatch in this legal action to enforce cleanup at LANL.

The suit was filed under the citizen suit provisions of the federal Resource Conservation and Recovery Act (RCRA), which the 2005 Consent Order explicitly incorporated. The law provides that any person who violates any requirement of RCRA is liable for a civil penalty up to \$37,500 for each day of violation. Our suit claims twelve violations, which range in length of time of up to 675 days each. Our current cost estimate of the alleged violations approaches 300 million dollars and counting.

Jay Coghlan, NukeWatch Executive Director, commented, “The federal government plans 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 seek to make the for-profit nuclear weaponeers 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.”

In 2005 the New Mexico Environment Department compelled DOE and the University of California (LANL’s manager at the time) to enter into a detailed Consent Order that mapped the way toward comprehensive cleanup at LANL. However, beginning in 2011 with Governor Martinez’s administration, the New Mexico Environment Department allowed LANL’s new contractor, the for-profit Los Alamos National Security, LLC, to stop virtually all cleanup, instead engaging in a “campaign” to move above ground, monitored radioactive transuranic wastes to the Waste Isolation Pilot Plant (WIPP). That campaign ended in disaster when an improperly treated radioactive waste drum from LANL ruptured, contaminating 21 workers and indefinitely closing that multi-billion dollar facility.

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.

Scott Kovac, NukeWatch Research Director, noted, “DOE and NMED agreed to all parts of the 2005 Consent Order, including the schedule. Then under the Martinez administration NMED granted more than 150 extensions requests, and DOE and LANS have still missed many of those deadlines. NukeWatch has taken this necessary step to enforce cleanup at LANL, to hold DOE accountable for protecting New Mexicans and make cleanup of legacy wastes the top priority. It’s ridiculous that we have to have this cleanup debate after 70 years of contamination from nuclear weapons research and production.”

The New Mexico Environment Department has issued a draft revised proposed Consent Order, for which the public comment period expires on May 31. The proposed new Consent Order specifically states that it “supersedes the 2005 Compliance Order on Consent (2005 Consent Order) and settles any outstanding alleged violations under the 2005 Consent Order.” (Sec. II.A.) This then would absolve DOE and LANS of nearly \$300 million in potential penalties.

Moreover, the new draft Order puts DOE in the driver’s seat instead of New Mexico. It explicitly states that, “DOE’s project plans and tools will be used to identify proposed milestones and targets” (p. 27) and “DOE shall define the use of screening levels and cleanup levels” (p. 31) Moreover, DOE can opt out of any cleanup because of “impracticability” or cost of cleanup (p. 34) and that “DOE shall update the milestones.... [according to] changes in anticipated funding levels.” (p. 28). So the new Consent Order is made subordinate to DOE’s budget, which has been cutting cleanup while increasing funding for nuclear weapons programs that caused the mess to begin with. This is the opposite of the original Consent Order, whose intent was to make DOE and LANL get increased funding for cleanup.

The relief or remedy that Nuclear Watch New Mexico seeks through its lawsuit is simple, asking the Court to enter a judgment

Enjoining the Defendants [DOE and LANS] to take action to come into compliance with the March 1, 2005 Consent Order, as amended on October 29, 2012, according to a reasonable but aggressive schedule ordered by this Court...

With that, Nuclear Watch New Mexico hopes to get real, comprehensive cleanup back on track at the Los Alamos National Laboratory.

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Nuclear Watch New Mexico’s lawsuit complaint is available at

<http://nukewatch.org/importantdocs/resources/NukeWatch-Complaint-Filed-20160512.pdf>

Our complaint alleges twelve counts of milestone compliance violations where NMED did not grant extensions.

From there we calculate 7,853 total days of noncompliance at \$37,500.00 per day, equal to \$294,487,500, with the clock still ticking.

Our May 5, 2016 second notice of intent to sue (which is a good summary of our complaint) is available at

<http://nukewatch.org/importantdocs/resources/NukeWatch-2nd-NOI-DOE-LANS-5-5-16.pdf>

Our January 20, 2016 notice of intent to sue is available at

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

NMED’s revised Consent Order is available at

<http://energy.gov/em/nmcb/downloads/nmed-revised-lanl-consent-order-draft-march-2016>