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Watchdogs Denounce New Consent Order on Los Alamos Lab Cleanup

Santa Fe, NM - Today, the New Mexico Environment Department (NMED) issued a new draft Consent Order that in theory will govern cleanup at the Los Alamos National Laboratory (LANL). Instead, the new Consent Order is a giveaway to the Department of Energy and the Lab who are intent on creating yet more radioactive waste from expanded nuclear weapons production.

Jay Coghlan, Nuclear Watch New Mexico 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. Real cleanup would be a win-win for New Mexicans, permanently protecting our water and environment while creating hundreds of high paying jobs. But yet the Environment Department fails New Mexicans by failing to enforce cleanup at Los Alamos.”

While announcing the new Consent Order NMED Secretary Ryan Flynn claimed that the old Consent Order process did not work. Nuclear Watch agrees that the old Consent Order failed, but that’s because Secretary Flynn granted more than 150 milestone extensions at the Lab’s request, effectively eviscerating it.

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 Department of Energy (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 has been cut to \$189 million for FY 2017, with only approximately a third going to actual cleanup (one-third goes to pensions and another third to safeguard improperly treated radioactive waste barrels, one of which ruptured and closed the multi-billion dollar Waste Isolation Pilot Plant).

The original 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. Instead, 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.

A few of the serious deficiencies of the new draft Consent Order are:

[Quotes are from the new draft Consent Order followed by page numbers]

- “The Parties agree that DOE’s project’s plans and tools will be used to identify proposed milestones and targets.” P. 27. “DOE shall define the use of screening levels and cleanup levels at a site...” P. 31. This puts the Department of Energy in the driver’s seat, not the New Mexico Environment Department.
- “DOE shall update the milestones and targets in Appendix B on an annual basis, accounting for such factors as... changes in anticipated funding levels.” P. 28. Therefore the new Consent Order will be held hostage to DOE’s budget, which recently cut LANL’s cleanup funding. This is directly opposite to the intent of the original Consent Order, which was to compel DOE and LANL to get increased funding for accelerated cleanup.
- “... [DOE and NMED] shall meet to discuss the appropriation and any necessary revision to the forecast, e.g. DOE did not receive adequate appropriations from Congress...” P. 29. Again, the new Consent Order and therefore cleanup at LANL will be held hostage to DOE funding, when DOE’s own track record makes clear that its priority is expanded nuclear weapons production paid for in part by cutting cleanup and nonproliferation programs.
- “If attainment of established cleanup objectives is demonstrated to be technically infeasible, DOE may perform risk-based alternative cleanup objectives...” P. 33. DOE can opt out because of “impracticability” or cost of cleanup. P. 34. This creates giant loopholes that threaten comprehensive cleanup at LANL.
- The new draft Consent Order explicitly states that public participation requirements do NOT apply to future modifications of the Order. P. 24. This is the opposite of what the original Consent Order required, which made a point of incorporating the public process requirements of federal environmental law. Nuclear Watch New Mexico maintains that full public participation requirements apply to the new Consent Order as well, including its very formulation as a modification of the old Consent Order. That full public participation process requires a public hearing if there are unresolved issues, which NMED has preemptively rejected, a position that may be of questionable legality.

On January 20, 2016, Nuclear Watch New Mexico formally notified LANL and DOE that it intends to sue them for failing to meet compliance milestones in the old Consent Order. We still expect to take that action sometime after the required 60 day notice period, as in our view this new Consent Order does nothing to remedy those violations.

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The new draft Consent Order is available at
<https://www.env.nm.gov/HWB/lanlperm.html#COOC>

NMED’s public notice for the draft Consent Order is available at
https://www.env.nm.gov/HWB/documents/PublicNotice_English.pdf

The 45-day public comment period ends 5:00 pm May 16, 2016.
Comments should be submitted to kathryn.roberts@state.nm.us