

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

NUCLEAR WATCH NEW MEXICO,	)	
	)	
<i>Plaintiff,</i>	)	
	)	
v.	)	No. 1:16-CV-00433-JCH-SCY
	)	
UNITED STATES DEPARTMENT OF ENERGY,	)	
	)	
and	)	
	)	
LOS ALAMOS NATIONAL SECURITY, LLC,	)	
	)	
<i>Defendants,</i>	)	
	)	
and	)	
	)	
NEW MEXICO ENVIRONMENT DEPARTMENT,	)	
	)	
<i>Intervenor.</i>	)	
	)	

**INTERVENOR NEW MEXICO ENVIRONMENT DEPARTMENT’S  
REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT**

Pursuant to Rule 56 of the Federal Rules of Civil Procedure and D.N.M.LR-Civ. 56.1, Intervenor New Mexico Environment Department (“NMED”) hereby submits this Reply in support of it’s Motion for Summary Judgement (“MSJ”) against Plaintiff Nuclear Watch New Mexico (Doc. #91).

I. INTRODUCTION

In its Memorandum Opinion and Order (Doc. #70, filed July 12, 2018) (“Opinion”) the Court dismissed Counts III and IV of Plaintiff’s Second Amended Complaint (Doc. #42), and Counts I and II to the extent that they sought declaratory and injunctive relief. Counts I and II, to the extent that they seek civil penalties, were not dismissed, and are therefore all that remains in dispute. The violations Plaintiff seeks civil penalties for in Counts I and II are 13 alleged

violations of the 2005 Compliance Order on Consent (“2005 Order”). Plaintiff has now filed Partial Motions for Summary Judgement against Defendants United States Department of Energy (“DOE”) and Los Alamos National Security, LLC. (“LANS”), seeking a ruling that DOE and LANS are liable for penalties for past violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* (“RCRA”). The limited purpose of this Reply is to correct the erroneous statements by Plaintiff that NMED in any way supports summary judgement against DOE and LANS.

## II. STANDARD OF REVIEW

NMED hereby incorporates the Standard of Review from NMED’s MSJ on Counts I and II of Plaintiff’s Second Amended Complaint (Doc. #91).

## III. CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS

NMED hereby incorporates the Statement of Undisputed Material Facts from NMED’s MSJ on Counts I and II of Plaintiff’s Second Amended Complaint (Doc. #91).

## IV. ARGUMENT

In their Response (Doc. #115) (“Response”) to NMED’s MSJ, Plaintiff now claims that NMED “agrees summary judgement is appropriate against DOE and LANS on 16 of [Plaintiff’s] 17 claimed violations.” Response at 4. Plaintiff repeats this mischaracterization in their Summary and Conclusions. Response at 33 (“As NMED agrees, summary judgement against DOE and LANS is appropriate”). To clarify, that is not NMED’s position in this litigation. NMED believes summary judgement is appropriate *against Plaintiff Nuclear Watch New Mexico* for the reasons contained in NMED’s MSJ (Doc. #91).

## V. CONCLUSION

For the reasons explained above, the Court should grant NMED’s Motion for Summary Judgement against Plaintiff Nuclear Watch New Mexico.

Respectfully submitted,

March 6, 2019

/s/ John B. Verheul

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*Counsel for the New Mexico Environment Department*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 6, 2019, a true and correct copy of New Mexico Environment Department’s Consolidated Response to Plaintiff’s Partial Motions for Summary Judgement was served via the Court’s ECF system upon all counsel of record:

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      /s/ John B. Verheul        
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