



Analysis of Revised Consent Order Governing Cleanup at LANL

On September 4, 2024, Gov. Michelle Lujan Grisham issued a press release that announced revisions to the contested 2016 Consent Order settlement agreement, which had failed to deliver timely cleanup at Los Alamos National Laboratory (LANL). This revised Consent Order goes into effect this October 1, 2024, the beginning of federal fiscal year 2025.

The new settlement agreement has positive revisions regarding public participation, an improved and faster dispute resolution process, and broadened enforcement of deadlines conforming to new five-year plans for some of the cleanup sites. The New Mexico Environment Department (NMED) anticipates that these new provisions will ensure prioritization of legacy waste cleanup by the Department of Energy (DOE). The overall positive impacts are not possible to assess until NMED completes and releases all the appendices.

NMED purports that the revised CO will force DOE to transparently spend its Congressionally appropriated funds towards achieving timely cleanup of the sites, which are grouped into “Campaigns.” This includes scheduled deadlines for monitoring well installations, allowing NMED to better define the chromium plume’s boundary in contaminated groundwater and to ensure that it doesn’t affect surrounding resources.

NMED announced a \$333,000 civil penalty for alleged violations, but the specific violations are not given.

NMED has 270 days to review the requests submitted by DOE for 150 Certificates of Completion (COCs). These COCs are issued after NMED agrees that a particular site has met cleanup requirements. There are 24 pages of sites with requests for Certificates of Completion pending with NMED. These overdue COCs must have been a DOE issue, but NMED has been working on recovering from the loss of staff and funding by the previous gubernatorial administration.

Nuclear Watch New Mexico is very familiar with the 2016 Consent Order and has denounced it from the beginning. We strongly disagreed when former NMED Secretary Ryan Flynn replaced the earlier rigorous 2005 Consent Order after granting LANL more than 150 milestone extensions that delayed cleanup. In addition, the then-DOE Environmental Management site manager threatened to terminate funding for the regional Northern New Mexico Citizens’ Advisory Board if it took any action against the 2016 Consent Order.

This newly revised Consent Order expands the required scheduling for some of the cleanup campaigns from a 3-year schedule to a 5-year schedule. Campaigns will be classified as either Class A Campaigns, which are those Campaigns that NMED and DOE can agree that completion

dates can be established, or Class B Campaigns, which are those Campaigns that NMED and DOE cannot agree on the completion dates.

In the older 3-year campaign schedules, only the first year had stipulated penalties if that part of the schedule was not met. In the new 5-year campaign revision, DOE can be fined for each year that a Class A Campaign does not meet its schedule. However, NMED has not yet issued a list of which campaigns are Class A or B. This revised Consent Order would be a substantial improvement if most campaigns are Class A.

Judgment will be reserved as to whether this revised Consent Order is a good thing until Class A campaigns are specified and all the appendices are released. Until then, it looks like it can be a strong improvement to the 2016 Consent Order, but that is a low bar. The real model by which to compare is the original 2005 Consent Order, which the Martinez Administration eviscerated to the benefit of DOE and LANL above the environment and New Mexican citizens.

The revised 2024 Consent Order is available at:

<https://www.governor.state.nm.us/2024/09/04/environment-department-signs-consent-order-with-doe-for-lanl-legacy-waste-clean-up/>

Other revisions

Section 11 Deferred Sites

Clarifies which sites can be deferred from corrective action activities in the revised Consent Order.

Section 23. Preparation / Review / Comment On Documents

Clarifies which documents that are subject to NMED approval under this Consent Order. If a document is not on this list, then that document is not subject to NMED approval.

Section 25. Dispute Resolution

Refines that any dispute that arises under this revised Consent Order shall be subject to the procedures of this Section unless the revised Consent Order expressly excludes such dispute from dispute resolution.

Section 30. Funding

REMOVED – Part C – NMED reserves the right to revise and/or adjust review times or any other time commitments pursuant to this Consent Order due to State funding limitations.

Section 32. Force Majeure

ADDED – A public health emergency as declared by the executive branch of the Federal or state government, including an epidemic or pandemic.

New Section –

Section 34. Public Participation, Pueblo And Local Government Conferrals, Independent Audits, And 10 Year Reviews

The revised CO states that a general purpose of this Consent Order is to provide for effective public participation. The Consent Order provides numerous opportunities for such public participation.

SECTION 36. STIPULATED PENALTIES

Milestones and Campaign Completion Dates subject to stipulated penalties shall be determined in accordance with Section 8 (Campaigns, Five-Year Schedules, and Annual Planning Process). Other deliverables submitted under this Consent Order are not subject to stipulated penalties.

Section 38. Termination [2024 – This Is All Of It]

NMED and DOE agree that this Consent Order Terminates when NMED concurs, that corrective action activities for the last Campaign are complete.

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