

Comments on the LANL PMP

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Via e-mail

Nuclear Watch of New Mexico (NWNM) submits these comments on the Los Alamos National Laboratory (LANL) Performance Management Plan (PMP). We do so under protest. It is ludicrous to have received an e-mail on Friday afternoon, July 19, notifying interested parties that comments are due on the following Monday. It also demonstrates the lack of credible "public process" that DOE purports to follow in the formulation of its PMPs. Because of the lack of sufficient notice these comments are not as comprehensive as they otherwise could be.

Public process: It is restated here that the notice for comment was entirely deficient. However, the entire public process, beginning with DOE's so-called "Top-to-Bottom Review" (TBR) (the driver behind these PMPs), is deficient. There was no public process with the TBR - - even the regulators were almost entirely shut out. Specific to the LANL PMP, the claim is made that the involvement of the Northern New Mexico Citizens Advisory Board constitutes public process. Never mind that in 1995 when the CAB did not function as DOE saw fit the Department simply disbanded it. It is not credible for DOE/LANL/UC to tout CAB involvement as sufficient demonstration of public process.

The PMP states

Fundamental to the success of this PMP are the partnerships that have built among DOE and UC, NMED, EPA, stakeholders, and the public. These parties have worked together in the development of this document, and plans exist for continued partnering as we move through the next steps of finalizing and implementing the PMP.

Feeling partially entitled to speak for stakeholders and the public we state here that the current PMP's proclaimed partnering with stakeholders and the public is a fabrication. To circle back, this then brings into doubt the fundamentals for success for the PMP. The public process used in substantial determination of the future course of lab cleanup needs solid correction.

DOE has yet to truly take to heart the real good that public comment actually does for the Department. It is worthy of note that the draft LANL Site-Wide Environmental Impact Statement completely omitted any analysis of wildfire risk in the consideration of continued and expanded operations at LANL. In response to citizen comment DOE did develop a detailed wildfire scenario and analysis that eerily matched the real thing when the Cerro Grande Fire broke out. LANL's Technical Advisor to the lab's Emergency Rehabilitation Team has personally told this commentator that the existence of that analysis and directly related preventative measures taken in advance saved the lab some three critical days under emergency conditions.

We therefore believe that the real and tangible value of citizen comment to DOE is amply demonstrated. It is a pity that DOE doesn't really take critical public analysis to heart and, in fact, consistently seeks to abort the process. Public comment commonly results in better agency decisions and actions. In that vein, the PMP process should make a real effort to solicit, gather, consider and respond to public comment.

The LANL PMP should start at square one: The LANL PMP is driven in policy by the TBR and in the proposed FY 2003 DOE budget by the so-called "Accelerated Cleanup" account. The very recent Senate Energy and Water report has rejected that account and reallocated increased funding to the sites. In a breathtaking quote, the Senate E&W committee noted, "The complete lack of information from the Department to Congress concerning the specific tasks to be performed with \$1,100,000,000 of the taxpayers money is as shocking as it is arrogant." Indeed, Senator Patty Murray has called the account a "slush fund," with which we concur. Given the serious uncertainty that Congress will appropriate funds for the Accelerated Cleanup account the LANL PMP may well have to start all over.

Over the years we have been through a number of DOE accelerated cleanup proposals, all of which have been laden with false and/or self-serving assumptions and all ultimately a house of cards. These are not just our own biased opinions; a recent GAO Report (*Waste Cleanup: Status and Implications of DOE's Compliance Agreements*, May 2002) records the many false starts. Ironically, the GAO report notes that the TBR "recommends that DOE, in consultation with its regulators, move to a national strategy for cleanup." The TBR itself states that "EM's cleanup strategy is not based on comprehensive, coherent, technically supported risk prioritization... Additionally, there is no programmatic strategy for cleanup and closure, only a collection of individual site strategies that results in costly duplication and assignment of priorities on a local rather than national basis."

The double irony here is that DOE has gone through convoluted twists and turns in order to avoid the formulation of a national cleanup strategy. Twice DOE has been successfully sued by citizen groups for its failure to have ever prepared an Environmental Restoration Programmatic Environmental Impact Statement. After the first suit DOE even ignored a federal court order to do so. After the second suit, DOE did release a widely discredited Waste Management PEIS, but still settled out of court in order to avoid the preparation of a national cleanup strategy. NWNM contends that there is a direct link between the miserable state of affairs with DOE's cleanup programs (and subsequent waste of taxpayers money) and the lack of a coherent national cleanup plan. Although we expect this to fall on deaf ears, we strongly advocate that DOE develop that national cleanup plan through the required NEPA process. As a matter of simple logic any LANL PMP should then be founded upon that national cleanup strategy.

Financial Accounting: DOE is notorious for cost overruns, wasting taxpayers' money and not giving the public an accurate picture of true cleanup costs. This commentator has been personally handed DOE packets by the Under Secretary for Energy, Science and Environment and the Assistant Secretary for Environmental Management which portrayed cleanup costs as being equivalent to the entire EM budget (which perhaps the uninformed might be led to accept). NWNM asserts that cleanup costs must be segregated from all other EM costs. Further, the GAO Report mentioned above states that DOE HQ has made no attempt to calculate the costs of compliance with existing regulatory orders and consent decrees by site. Any LANL PMP should

clearly segregate cleanup costs from all other environmental management costs and should calculate the costs of complying with existing and pending state orders.

Further, the purported cost savings in the draft LANL PMP are not supported and appear to rely on the many assumptions made by DOE/LANL/UC and noted in these comments. Any finalized PMP should include baseline costs for LANL ER activities as they are currently constituted plus costs for proposed activities under the PMP for comparative purposes.

The LANL PMP asserts that it will “substantially resolve issues underlying the Draft Administrative Order and the Determination of Imminent and Substantial Endangerment that DOE and UC received from NMED in May 2002... by calling for sustained funding, advancing groundwater protection, and reducing the highest-priority risks to the public and the environment.” For starters, as already mentioned above, appropriations for DOE’s Accelerated Cleanup account are now seriously in doubt, thus severely undermining part 1 of the draft PMP’s premise. Future iterations will have to reflect the realities of the appropriations process. Moreover, given the Senate E&W committee’s rejection of the Accelerated Cleanup account DOE/LANL/UC may perhaps find NMED less willing to “deal.”

Secondly, the PMP’s notion of advancing groundwater protection is “monitored natural attenuation,” which could be restated as monitored pollution and dilution. We will concede that this approach is certainly more advanced than the lab’s self-proclaimed myth of some five years ago that the volcanic tuff above Los Alamos County’s groundwater acted as an impermeable barrier to groundwater contamination. However, the PMP presupposes that groundwater treatment will not be necessary, just as past accelerated cleanup programs predetermined (and just as DOE use to do at Pantex). We await further data on the status on groundwater contamination (and have some confidence in the future collection of that data precisely because it will be driven by the Order and not the LANL PMP). But for the draft PMP to assert that it will substantially resolve the Order’s groundwater issues is absurd.

The PMP is also presumptuous in asserting that it will substantially resolve highest-priority risks. For starters, the PMP intentionally avoids discussion of TA-54 Area G, saying that it will be addressed at a later date. Instead, any LANL PMP should immediately address Area G issues, including legally required closure plans. Secondly, we note that the “presumptive remedy” for MDAs is to cover them in place, which we interpret as cap and cover and walk away under the aegis of Long Term Stewardship (see below). This demonstrates how hollow and prejudiced this PMP truly is. We predict that the PMP, as currently drafted, will not stand under the pressure of NMED’s Order, congressional rejection of funding for the Accelerated Cleanup account and citizen activism.

It is ironic that the PMP asserts that it will substantially resolve issues underlying NMED’s Administrative Order while at the same time that the University of California has entered into an increasingly adversarial relationship with NMED by attempting to overthrow in court the finding of substantial endangerment. This is not a conducive way to win friends, influence neighbors and resolve issues with the regulator. We commend NMED for having issued its finding and order. In short, in our view the LANL PMP is far from substantially resolving all of the issues underlying NMED’s draft order. In fact, the final order is bound raise yet more issues, which we hope and trust will lead to mandated real cleanup. In our view, through its order NMED has now

out put itself into the driver's seat. Any LANL PMP should reflect that changed reality instead of merely acting as the vehicle for predetermined DOE/LANL/UC decisions.

Finally, we note that the PMP is permeated with the assumption that NMED has fully bought into the commitments expressed in the co-signed Letter of Intent (which was drawn up by DOE to begin with). Even before the Senate E&W subcommittee rejected Accelerated Cleanup funding that was a shaky assumption. It is noteworthy that NMED Secretary Maggiore described the terms of the LOI as a mere "gesture" while DOE and LANL tried to read all kinds of things into it. In the event that the full senate also rejects Accelerated Cleanup funding things could indeed get very interesting, especially if DOE continues to cut LANL environmental restoration funding. It was that pattern of declining funding that largely prompted NMED to issue its draft order to begin with.

Long Term Stewardship: Another assumption that permeates the LANL PMP is that there will be a credible DOE Long Term Stewardship program that will enable a "timely hand-off" from DOE EM to the National Nuclear Security Administration (NNSA) of "post cleanup responsibilities." Just as DOE has miserably failed to formulate a national cleanup plan it has also failed to formulate a Long Term Stewardship plan. Funding for the DOE LTS office is on the decline. Reportedly that office may even be terminated in the not so distant future (so much for "long term"). Thus this iteration of the LANL PMP is substantially based on another house of cards. Any credible LANL PMP must follow detailed formulation by DOE of its Long Term Stewardship program. On a final note, obviously the NNSA is not a suitable agency for cleanup activities.

The University of California: The PMP assumes that UC will remain the manager for LANL's environmental restoration program. UC has been a lousy manager thus far, for example see the DOE Inspector General's Report (circa 1996) which estimated that out of some \$360 million spent by that date only some 20% had gone into actual cleanup. Additionally, under UC management the business cost of and overhead on LANL ER programs is far too excessive. The DOE Under Secretary for Energy, Science and Environment has personally told this commentator that the purpose of the accelerated cleanup initiative is to "shock the system" into results, efficiency and cost savings. If that is truly the purpose, then for LANL cleanup UC should get out of the lab's ER programs. This could also have the side benefits of prompting greater regional economic development through the use of local contractors and greater revenues to the state in the form of gross receipts taxes.

Legacy TRU Wastes: NWNM finds it incredible that the PMP implicitly defines legacy TRU waste as just those TRU wastes stored since the mid-1970's and slated for disposal at the Waste Isolation Pilot Plant (WIPP). There is no mention of TRU wastes buried across the Parajito Plateau, nor are we aware of any credible attempt to inventory what those wastes might be. The PMP is entirely self-serving and guilty of omission in completely failing to address buried TRU Waste issues. It is incredible that the PMP asserts that "[o]nce all legacy waste is disposed of and the facilities cleaned up, the EM waste mission at LANL will be complete." We submit that this is evidence that, in combination with cap and cover and so-called Long Term Stewardship, DOE/LNL/UC is planning to ship stored TRU Legacy waste to WIPP and then falsely claim that the lab is cleaned up.

The PMP is also guilty of omission in not pursuing safer and more secure interim storage of

TRU wastes at TA-54. Additionally, the PMP is arrogant in presupposing modifications favorable to DOE in the state WIPP permit.

- End of Comments -

Thank you for your consideration of these comments. NWNM would appreciate a response to them and ample notification of further iterations to the LANL PMP.

Respectfully submitted,

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Director