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NM Environment Dept Finalizes Consent Order on Los Alamos Lab Cleanup Surrenders Enforcement to Nuclear Weaponers

Santa Fe, NM – In a classic move to avoid publicity, the New Mexico Environment Department (NMED) announced late Friday afternoon June 24 that it had finalized a new “Consent Order” to replace a 2005 Order governing cleanup at the Los Alamos National Laboratory (LANL). The Environment Department’s brief press release headlined “Agreement Focuses on Cleanup & Supporting Stronger Federal Funding Requests.” This is doublespeak, as the new Consent Order is a giveaway to the Department of Energy and the Lab, surrendering the strong enforceability of the old Consent Order. The new Order is also clearly the opposite of the old Consent Order, whose underlying intent was to make DOE and LANL get more money from Congress for accelerated cleanup. In contrast, the new Consent Order allows them to get out of future cleanup by simply claiming that it’s too expensive or impractical to clean up.

The nuclear weaponers are now openly talking about the “The Second Nuclear Age” before cleaning up from the first nuclear age. They are actively seeking to expand nuclear weapons production that caused the widespread contamination to begin with, particularly plutonium pit production at LANL.

Jay Coghlan, Nuclear Watch New Mexico Director, commented, “The nuclear weaponers 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.”

When NMED Secretary Ryan Flynn announced a draft new Consent Order on March 30, he claimed that the old Consent Order did not work. Nuclear Watch agrees, but that’s because Secretary Flynn granted more than 150 compliance milestone extensions at the Lab’s request, effectively eviscerating the old Consent Order. While finalizing the new Consent Order NMED ignored the explicit public participation requirements of the old Order, which among other things requires a public hearing on major modifications. Instead, NMED rammed through the final Consent Order, largely brushing aside the formal comments of some 40 concerned citizens and the Santa Clara Pueblo.

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 (down from \$225 million in FY 2014), 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 Consent Order are:
[Quotes are from the new 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. 28. “DOE shall define the use of screening levels and cleanup levels at a site...” P. 32. 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. 29. Therefore the new Consent Order will be held hostage to DOE’s budget, which recently cut LANL’s cleanup funding.
- “... [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. 30. 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. 34. DOE can opt out because of “impracticability” or cost of cleanup. P. 35. 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. 25. 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 major modification of the old Consent Order. That full public participation

process requires a public hearing if there are unresolved issues, which NMED has rejected, a position that may be of questionable legality.

On May 12, 2016, Nuclear Watch New Mexico filed a lawsuit against LANL and DOE for failing to meet compliance milestones in the old Consent Order. These violations incur around \$300 million dollars in potential penalties, which NMED shows no sign of enforcing. To the contrary, NMED has filed a motion to intervene against Nuclear Watch New Mexico in its lawsuit, raising the question of whose side the Environment Department is on, the environment or the polluter (in this case a for-profit nuclear weapons lab)?

Moreover, when Nuclear Watch NM filed a notice of intent to sue on January 21, NMED Secretary Flynn sought to intimidate our lawyers by declaring “If a suit is filed, and the Environment Department becomes involved, we would insist on collecting any and all labor and legal costs from the (New Mexico Environmental Law Center) to reimburse New Mexico’s taxpayers for the costs resulting from this groundless and frivolous action.”

Far from being a frivolous action, Nuclear Watch and the New Mexico Environmental Law Center seek to compel full and genuine environmental restoration at the Los Alamos Lab, which the new Consent Order blocks by giving the nuclear weaponeers giant loopholes to avoid cleanup.

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NMED’s June 24 press release and the new Consent Order are available at <https://www.env.nm.gov/wp-content/uploads/2016/01/160624PR-ConsentOrderFinalized.pdf>

Public comment on the draft Consent Order (including Nuclear Watch NM and Santa Clara Pueblo) is available at <https://www.env.nm.gov/HWB/lanlperm.html%23Comments2016DraftCO>

Nuclear Watch New Mexico’s lawsuit complaint, filed May 12, 2016, is available at <http://nukewatch.org/importantdocs/resources/NukeWatch-Complaint-Filed-20160512.pdf>
Our complaint alleged twelve counts of milestone compliance violations where NMED did not grant extensions. At that time we calculated 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 Secretary Flynn’s quote is from “Nuclear Watch to sue over LANL cleanup problems”, Mark Oswald, *Albuquerque Journal*, January 21, 2016, <http://www.abqjournal.com/709455/nuke-watch-files-suit-over-missed-clean-up-deadlines-at-los-alamos.html>