

Community Engagement Meeting For LANL CO held in Los Alamos on January 9, 2020

Comments are not included verbatim but are summarized below.

Opening remarks and introduction:

Stephanie Stringer, Director, Resource Protection Division. (see attached enclosure 1 for presentation)

Stephanie gave a short presentation on background and history of LANL 2016 Compliance Order on Consent (CO). She explained the purpose of the meeting and set ground rules. The commenters were asked to limit speaking to 3 minutes to give everyone an opportunity to speak. If there was additional time at the end, commenters who had already spoken were to be allowed a second opportunity to speak. Oral or written comments could be submitted during the meeting, or via email or regular mail. The timeframe to submit comments to the Department is February 28, 2020.

Stephanie introduced the new Hazardous Waste Bureau Chief, Kevin Pierard.

Robert Hull- Northern NM Citizens Advisory Board (provided written comments see enclosure 2)

I am a retired scientist from the Los Alamos community, and I also belong to the CAB, my comments today are personal as a member of the public. I am concerned that the meetings between NMED and DOE on milestones and targets are closed to the public. I do not feel that these closed meetings follow the NM sunshine laws and do not allow for transparency. The current process allows public participation at the end of the annual planning process and not when the new milestone and targets are being determined. NMED stated in the December public meeting that several meetings occurred between NMED and DOE but that members of the public were not allowed to participate or observe.

Eric Vasquez- Regional Coalition of Northern NM Communities

The Regional Coalition took major interest and made comments on the 2016 CO, and supported the changes made to the CO. The Regional Coalition did an analysis of the 2016 CO and their review has shown that it was successful in engaging the community and has shown great progress in addressing cleanup of priority sites. 2016 CO has been productive and should expand on approach and increase engagement of local communities.

Tony Parkhirst

I attended an EPA RCRA training course in 2018. I question that LANL has received additional funding for the plutonium facility but is not spending additional funding towards cleanup. I also question the ability of LANL to self-regulate their clean up, and the changes being made to EPA regulations at the national level. Water is an important resource and must be protected for human life.

Beth Beloff- Northern NM CAB, Sustainable Santa Fe (provided written comments, see enclosure 3)

I am concerned that the 2016 CO has removed scheduled and enforceable deadlines and oversight. The current CO allow for the scope of work to be based on budget and allows DOE to determine what are priorities. The CAB has submitted recommendation to LANL on ways to supplement the current information sharing process, those recommendations include:

DOE should share their 10-year plan and benchmark goals.

Additional benchmarks should be included in Appendices B and C.

The CO should include a scope beyond the current 2-year plan.

DOE should share how the prioritization of projects was determined, and the risk considerations in the CO. The CO should include more opportunities for the public to participate in meaningful ways in the process of determining milestones and targets.

Charles De Saillan- NM Environmental Law Center

I have 20-minute presentation prepared and would like more time. *(NMED-Additional time will be given once everyone who has signed up to speak is given an opportunity to speak)*. Thank you for setting up this meeting, especially Sec. Kenney for giving the public an opportunity to comment on the current CO. I am a lawyer with over 35 years of experience in environmental law, I previously worked for the Environment Department for 14 years and helped negotiate the previous 2005 consent order. I would like to start with an overview on the history of the CO. LANL has operated since the 1940s, there is soil, air, groundwater and surface water contamination at LANL. From 1990-2000 LANL had made very little progress in cleaning up contaminated sites. Plans were piecemeal and ineffective, 2005 CO compelled DOE to cleanup. In 2003 the NMED issued an imminent and substantial endangerment order which is allowed under RCRA and NM HWA laws and directed LANL to immediately begin cleaning up contaminated sites.

Scott Kovac- Nuclear Watch NM (provided written comments, see enclosure 4)

You have to ask yourself how did the 2016 CO improve protection to human health and the environment? I would like to read from SFNM article written by Rebecca Moss *(read portion of article)*. The current 2016 CO allows the DOE to set milestones and should be reversed. I am also concerned that the CO does not include radionuclides, I understand that this is a federal law but feel that this should be addressed in the CO. The CO needs to have public and Pueblo input earlier on in the annual planning process, the process should not be driven by DOE's budget. It is a spending plan, DOE figures out how much money they get and want to spend on cleanup. The current campaign approach is not working and only 11 campaigns are being worked on. Campaigns should be gotten rid-off.

Jay Coghlan -Nuclear Watch NM (provided written comments, see enclosure 4)

Three minutes is too short, in the future I would like NMED to allow for 5 minutes to speakers. In addition to the comments today Nuclear Watch NM will be submitting written comment to NMED on the CO. I would like NMED to be in the driving seat on cleanup, cleanup should not be based on the DOE's budget. 2016 CO is opposite of 2005 CO. After signing of 2016 CO, lifecycle budget was low-balled. Currently only 5000 cubic meters of waste is proposed for cleanup and treatment, but 800,000 cubic meters of legacy waste is currently in MDAs and is not proposed for removal or treatment. This CO was written by people who have since left the Environment Department to work for the regulated community, former secretary Ryan Flynn currently works for the NM Oil and Gas industry, and former RPD director Katie Roberts now works for a DOE sub-contractor, and ex-DOE manager, Christine Gelles now works for a LANL subcontractor, Longnecker and Associates. I hold NMED official responsible for

cleanup and I do not believe the 2016 CO, is an enforceable document. DOE can be made to change the CO.

Joni Arends -Concerned Citizens for Nuclear Safety

The impetus for the original CO was the Cerro Grande fire which highlighted the need to address waste and contamination on LANL property. The smoke from the Cerro Grande fire was very dangerous and cyanide got in river as a result of fire retardant being used was also an issue. Contamination from LANL is impacting the health of New Mexicans. The imminent and substantial endangerment order was an important document and the order from 2002 are important documents to understand the driving force in cleanup. When 2005 CO came out, there were two opportunities for public to comment, once on draft CO and once on final CO. When the 2016 CO came out, I was out of state, but was disheartened to hear about the conflict of interest in developing the 2016 CO. NMED has an obligation to revise the 2016 CO. The current 2016 CO is an assault on the people, and the public process and is not fair to soil and groundwater. There was no opportunity to modify the 2016 CO. Language in the 2016 CO states that it supersedes the 2005 CO. The 2016 CO is an injustice to the people and the environment. I would like monthly or quarterly updates to the public on the CO and on the process of developing milestones and targets. It is an opportunity for DOE to step forward and renegotiate the CO.

Alexa Jaramillo- Youth Representative of Communities for Clean Water CCW) (provided written comments, see enclosure 5).

I would like to say that I do not personally agree with LANL's existence, because of its history of colonial oppression to the Pueblo people. I request that the 2016 CO be revised to include the following:

1. An acknowledgment of the First Peoples spiritual and cultural right to access their ancestral lands.
2. Requirement to include bioremediation and mycoremediation in cleanup. In my work with CCW I have seen mushroom growing in the canyon in LANL, there are many scientific studies that show that mushrooms can be used in cleanup.
3. A requirement for community collaboration in how mycoremediation is designed. Many times, NMED's perspective the communities are different.
4. Reinstate the surface water requirements that were in the original CO.
5. Require compliance with the NM hazardous waste act.
6. Require treatment of run-on and runoff at each SWMU.
7. Reinstate public comments.
8. Reinstate stipulated penalties and allow the public to review penalties before they are finalized.
9. Require installation of contained burn facilities as an alternative to OB.
10. Require installation of contained detonation facilities as an alternative to OD.

Second round of comments allowed speakers 7 minutes to comment

Scott Kovac-Nuclear Watch NM

The Campaign approach only has 11 of 17 campaigns ongoing but they don't expect the cleanup to be complete soon. The 10-20 milestones identified by the parties are not enough, should increase, this is a low bar for DOE to accomplish. I would like there to be a scheduled final date for all

cleanup. The RCRA states that if the last schedule date is moved then it should be a Class 3 permit modification with opportunity for public hearing. I understand that if work is being done and they find more waste that the deadline for clean up will change. It is ok if the final date is 2045. Having public input prior to drafting the new CO is necessary.

Tony Parkierst

This is an observation, this is a consent order, this is signed by both NMED and DOE, why isn't this signed by the public? Why is this not on the ballot? The public officials don't have to feel the effect of this CO, the public do.

Kathy Sanchez- Tewa Women United

I am a member of San Ildefonso Pueblo, and I think in my native tongue. (*speaks in Tewa*). I do not think the 2016 CO is appropriate. LANL makes war machinery for military. In 1989 Tewa Women United had its first meeting because we wanted to honor and work with the elements and mother earth. I had previously been a part of CAB, in 2005 the CO had very strong teeth and the new CO does not, I do not consider the current CO to be a consent order because the public, the children and the women were not involved. Do parallel tracking of both 2005 and 2016 CO. I have diabetes and I believe that this is due to the smoke from the Cerro Grande Fire. I am also concerned that the members of the San Ildefonso Pueblo do not have access to the LANL property for cultural practices, need clearance from DOE. Go for more powerful and respectful CO.

James Bearzi- Environmental Consultant for the Buckman Direct Diversion Board

The BDD is concerned that the meeting was scheduled at the same time as monthly board meeting, and so the board is not able to attend. BDD will provide comments. The BDD supplies water to the city of Santa Fe and should be protected. The board is concerned that these decisions are being made without the board. I used to be the Bureau Chief at the HWB at NMED and I remember working on the 2005 CO. When the 2005 CO was written many groups were at the table, San Ildefonso, Santa Clara Pueblo, Nuke Watch etc. and the people had a chance to talk. The 2005 CO was not perfect, it was a compromised document, but it was something that everyone could live with, and this involved informed consent from the public. This informed consent did not happen in the 2016 CO. There are some specific issues with the 2016 CO, and some issues with NMED. NMED is understaffed, Neelam has a staff of 2-3 people reviewing LANL documents, NMED has lots of vacancies that need to be filled. The BDD is interested in surface water and ground water and the impacts of contamination on the Rio Grande. In the most recent Los Alamos/Pueblo Canyon (LA/P) periodic stormwater monitoring report NMED commented on aluminum not meeting surface water standards. What is NMED doing to require the DOE to clean up aluminum from this site? I also have questions and concerns on the timing of the LA/P and Sandia reports, and the length of time from when it was submitted and when it was reviewed illustrates the backlog of work at NMED due to the reduced staff size. It is a misconception that the 2005 CO did not consider DOE's budget. The 2005 CO prioritization included budget, but it also included NMED's veto power to DOE priorities. The 2005 CO included enforcement, the targets are not enforceable, they should be. I would like language removed from the 2016 CO that doesn't include stipulated penalties for not completing targets. Also, I am concerned with the severing of the CO with the NPDES requirements. Four certificates of completion without controls for given which had surface water issues. Finally, I am

dismayed that this meeting was scheduled at the same time as the BDD and would like an additional meeting that does not conflict with that.

Jay Coghlan -Nuclear Watch NM

This 2016 CO was written by people who had strong conflicts of interest. It is amazing to me that Ryan Flynn had the gall to grant extensions to 150+ milestones and then said that the 2005 CO was not working. The 2016 CO needs to be revised so the DOE budget does not drive cleanup. CO needs to remove the language that the DOE will determine what standards the sites are cleaned up to, to remove the statement that the DOE can change milestones based on budget and that this can change scope of work planned on a site, because the DOE had determined that it is not feasible that the complete cleanup can occur. The DOE is awash in funding for pit production, but they are low balling their clean up.

Charles De Saillan- NM Environmental Law Center

In 2002, the imminent and substantial endangerment order to address public health and the environment was issued by NMED to LANL and its contractor the University of California. NMED issued a unilateral order to address contamination. LANL and UC sued the state and after approximately 2 years the settlement agreement discussion broke down because LANL wanted to change “must and shall” to “may”. DOE came back to table because of bad press. Then on March 1, 2005, NMED and DOE signed the CO. The 2005 CO was a document of ~205 pages, it had key provisions, it had deadlines, stipulated penalties, and did allow for extensions to be granted for good cause. It included detailed report and sampling requirements. From 2005-2011 the DOE made substantial progress on site characterization, then in 2011 the DOE slowed down clean up, and demobilized their cleanup work. NMED provided DOE with 150 extensions to deadlines some extensions were for 3rd or 4th time, and DOE became out of compliance with the 2005 CO. The DOE was out of compliance for: failure to submit reports on time, failure to complete remedial activities. I estimate that in total the DOE owed NMED 300 million dollars in penalties as a result. The 2016 CO stated that it supersedes the previous CO and also removed the previous penalties, and schedule requirements. The DOE campaign approach is based on budget. As a consequence, cleanup has slowed down. There is a procedural defect in how the CO was adopted, there was no opportunities for a public hearing, but instead only a public comment period was provided. The 2016 CO needs to be renegotiated, it should have detailed schedule with interim and final dates. The CO needs to have a specific schedule for completing clean up, a final deadline for completing the entire clean up of the laboratory. The CO should have stipulated penalties for all missed deadlines. There should be provision for extensions with a good cause. The CO need to enforce deadlines, needs to have detailed technical requirements, cleanup standards, needs to have provisions for public participation same as 2005 CO. The document needs to be signed by the contractor and the contractor needs to be liable for meeting those deadlines. It should be signed by NMED, DOE, and their contractor. In the current CO, just cause, is very vaguely defined, dispute resolution needs to be redefined. The DOE is liable for millions of dollars in penalties, and the upcoming permit renewal could also be used by NMED as leverage to get the DOE to renegotiate it.

Due to a misprint in the SF New Mexican stating that the meeting began at 7 pm some members of the public attended late, new comers were allowed to also speak. NMED contacted the SFNM as soon as they became aware, and the time was corrected on the electronic copy of the article. NMED also used a social media update to clarify.

John Tolson- Environmental Contractor at LANL

I don't know what was said before, but I have worked for 20 years in the field doing environmental work at the LANL facility. I was happy to see that the CO was renegotiated, because I have seen deadlines have unintended consequences. For instance, the 3706-campaign had unintended consequence on the WIPP. Deadlines that are decided without the people who are doing the work miss the mark. The current CO includes the workers who are in the field and helps ensure that there is enough time to do the work right.

James Bearzi- Environmental Consultant for the Buckman Direct Diversion Board

Public participation is important, I would like NMED to have another public meeting before a decision is made. It is important for NMED to reach out to the public and to include what people have to say in their decision.

Stephanie Stringer- RPD, NMED

I am working with NMED's teams on this issue. I am taking everything that was said today into consideration and am taking the question of state resources to the state legislature. You can contact me by phone call or in writing at the contact information provided on this slide. NMED will have another meeting next quarter, if there is a topic you would like that meeting to focus on, please provide NMED with suggestions. Thank you.