

James C. Kenney, Cabinet Secretary
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Dr., suite N4050
Santa Fe, New Mexico 87505

Thursday, January 9th, 2020

Dear Sir;

Thank you for having your folks hold the public engagement meeting at UNM-LA this Thursday on the topic of the LANL 2016 Compliance Order on Consent (Consent Order). I am a semi-retired environmental scientist and engineer, and a 28-year resident of Los Alamos. Because of my concerns about protecting our northern NM environment, I am now serving on the Northern New Mexico Citizen's Advisory Board (NNM CAB), but in submitting this letter I am in no way representing that Board. I am only expressing my opinion as a potentially affected private party.

I want to express my concern that the LANL Consent Order annual process to revise or amend the Consent Order, primarily Appendices A and B, is a process closed to the public, and it is my personal contention that the meetings to negotiate changes should not be closed since they are government-to-government, and should not be proprietary. Allowing public access would be an excellent opportunity for a true "government in the sunshine" transparency experience that both DOE-EM and NMED attest to. As you know, the New Mexico Sunshine Laws are promulgated in the NM Open Meetings Act (OMA). For others reading this letter, the "Open Meetings Act," NMSA 1978, Sections 10-15-1 to 10-15-4, is known as the NM "Sunshine Law." As stated in the NM OMA Guide "Sunshine laws generally require that public business be conducted in full public view, that the actions of public bodies be taken openly, and that the deliberations of public bodies be open to the public." The Attorney General has the statutory authority to enforce OMA and to ensure that those public meetings covered by OMA in compliance with state law. I think the public would like to know if the NM Attorney General been consulted about these meetings and determined a need to comply with the OMA.

All of this is important because by the time the public sees the LANL Consent Order posted on the NMED website near the end of each year since 2016 it has already been approved, adopted, signed and is legally binding on both parties. The annual process has ended – any public input after that has no effect on the current version of the Consent Order. DOE and NMED do both engage the public during the year requesting input on environmental concerns. The problem is that the public doesn't have the opportunity to hear from DOE-EM or NMED as to what changes they are considering to the Consent Order before the process has been completed.

The NMED *Annual Planning Process FFY 2020* Meeting was held December 16th of 2019 after Appendices A and B were officially modified the previous month. At that December meeting it was explained that there were several meetings between LANL and NMED to negotiate the Consent Order modifications prior to the signing. To the best of my knowledge, no members of the public including at least one DOE-sponsored organization whose mission is specifically to provide advice and guidance on matters such as this (i.e. the NNM CAB), were allowed to participate even as observers of the process. DOE-EM LA Manager, Doug Hintze, has expressed several times that nothing that they are doing is considered classified so why can't the public be involved in the process?

Thank you for this opportunity to comment. I rely on the good judgment of the State to arrive at an equitable solution to this issue and allow the public an opportunity to participate in some meaningful way in the Consent Order process. Even if the OMA doesn't apply, the desire for transparency on the part of DOE-EM LA and NMED should require it.

Respectfully,



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References:

- LANL 2016 Compliance Order on Consent (<https://www.env.nm.gov/hazardous-waste/lanl/>)
- The Open Meetings Act (OMA), NMSA 1978, Chapter 10, Article 15 (Sections 10-15-1 to 10-15-4)
- *NM Open Meetings Act, Compliance Guide*, Eighth Ed., 2015 (<https://www.nmag.gov/uploads/files/Publications/ComplianceGuides/Open%20Meetings%20Act%20Compliance%20Guide%202015.pdf>)