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April 10, 2015

Ms. Christine Gelles, Acting Manager
EM-LA Field Office
3747 West Jemez Road, MS A316
Los Alamos, NM 87544

Dear Ms. Gelles,

I am pleased to enclose Recommendation 2015-03, unanimously approved by the Northern New Mexico Citizens' Advisory Board at its April 8, 2015 Combined Committee meeting in Pojoaque, New Mexico.

Please call Lee Bishop, Co-DDFO, Michael Gardipe, Co-DDFO, or Menice Santistevan, Executive Director, if you have questions regarding this recommendation. We look forward to the response from the Department of Energy.

Sincerely,

Douglas M. Sayre
Chair, NNM CAB

Enclosure: a/s

Cc w/encl:

U. S. Senator Tom Udall
U. S. Senator Martin Heinrich
U. S. Congressman Ben R. Lujan
Secretary Ryan Flynn, NMED
David Borak, DFO (via e-mail)
M. Lee Bishop, Co-DDFO (via e-mail)
Michael Gardipe, Co-DDFO (via e-mail)
George Henckel, DOE/EPO (via e-mail)
Jeff Kendall, NMED
Rich Mayer, EPA
Randy Erickson (via e-mail)
Dean Hammonds, USACE (via e-mail)
Menice B. Santistevan, Executive Director NNM CAB
Andrea Romero, RCLC Executive Director (via e-mail)
Gil L. Vigil, Director Eight Northern Indian Pueblos
NNM CAB File

NORTHERN NEW MEXICO CITIZENS' ADVISORY BOARD
Recommendation to the Department of Energy
No. 2015-03
Supplemental Environmental Projects
Drafted by: Alex A. Puglisi

Background

The New Mexico Environment Department (NMED) recently fined Los Alamos National Laboratory (LANL) and the Department of Energy (DOE)'s Waste Isolation Pilot Plant (WIPP) \$54 million for failures connected to a radiation leak when a drum of waste processed at LANL breached a year ago at WIPP, shutting down the nation's nuclear waste repository. LANL has also acknowledged it will miss deadlines set for later this year for long-term waste cleanup at LANL set in a binding consent decree.

NMED has announced that it will issue additional penalties exceeding \$100 million if DOE does not accept accountability for past violations and work with the state on recent compliance orders. NMED Secretary Ryan Flynn has recently stated that a new compliance order which NMED is currently working on is related solely to recent violations at Los Alamos and does not take into account additional potential penalties linked to milestones in the state's consent order with DOE. "The number is much larger than \$100 million, but currently \$104 million of that compliance order is based solely on violations for which there is no dispute of fact," according to NMED. (2)

Comments and Observations

A Supplemental Environmental Project (SEP) is defined as an environmentally beneficial project which a violator voluntarily agrees to undertake in settlement of an enforcement action but which is not legally required by law;

Whereas, the NMED and U.S. Environmental Protection Agency allow for the implementation of SEPs, in lieu of a portion of civil penalties calculated under the New Mexico Hazardous Waste Act, Civil Penalty Policy, when such payment of fines and penalties are imposed;

Whereas Environmental Management (EM) funding allocated to the U.S. DOE and/or National Nuclear Security Administration for LANL should be used to protect and/or improve the health and environment of the citizens of the geographic area and population affected by the previous disposal of legacy wastes at the Laboratory located in northern New Mexico; and,

Whereas, EPA and NMED have set out the following seven common categories of projects that can be acceptable SEPs: (3)(4)

1. **Public Health:** SEPs that provide diagnostic, preventative, or remedial action to a human population harmed or potentially harmed by the violator (May include examining residents in a community to determine if anyone has experienced any health problems because of the company's violations.)
2. **Pollution Prevention:** Prevents the generation of pollution by reducing the amount or toxicity of a hazardous substance during the production process to reduce long term pollution risks. These SEPs involve changes so that the company could no longer generate some form of pollution. For example, a company may make its operation more efficient so that it avoids making a hazardous waste along with its product.
3. **Environmental Protection:** SEP that enhances protection of environment by decreasing the amount or toxicity of a hazardous substance already generated, or by implementing enhanced management of

1 hazardous substances to reduce long term pollution risks. These SEPs reduce the amount and/or danger
2 presented by some form of pollution, often by providing better treatment and disposal of the pollutant.

- 3 4. **Environmental Restoration: a SEP that enhances the condition of the ecosystem or geographic**
4 **area (s) adversely affected by the violation, provided that the project exceeds the violator's**
5 **obligation to conduct corrective action:** These SEPs enhance the condition of the ecosystem or
6 geographic area (improve the condition of the land, air or water) adversely affected by the violation(s),
7 provided that the project exceeds the violator's existing obligation to conduct corrective action.(for
8 example, by purchasing land or developing conservation programs for the land, a company could protect
9 a source of drinking water.
- 10 5. **Environmental Assessments and Audits:** Internal or independent systematic review, investigation, or
11 evaluation of a violator's environmental programs. A violating company may agree to examine its
12 operations to determine if it is causing any other pollution problems or can run its operations better to
13 avoid violations in the future. These audits go well beyond standard business practice.
- 14 6. **Environmental Compliance:** SEPs that provide training or support to members of the regulated
15 community or regulators regarding HWA and RCRA requirements. These are SEPs in which an alleged a
16 violator provides training or technical support to other members of the regulated community to achieve,
17 or go beyond, compliance with applicable environmental requirements.
- 18 7. **Renewable Energy:** SEPs that reduces the need for energy generated form conventional fuels or
19 eliminates dependency upon traditional energy sources and consequently reduces emissions or wastes
20 associated with conventional power production or use.

21 **Recommendation:**

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- 23 1. The Northern New Mexico Citizens' Advisory Board (NNMCAB) hereby recommends that
24 DOE/EM pursue SEPs in lieu of any fines and penalties issued by the NMED related to the failure
25 of a drum of waste processed at LANL which breached a year ago at WIPP, shutting down the
26 nation's nuclear waste repository.
- 27
- 28 2. The NNMCAB hereby recommends DOE/EM pursue SEPs, in lieu of any fines and penalties, for
29 any new fines and penalties imposed by any new compliance order issued by NMED for recent
30 violations at LANL which do not take into account additional potential penalties linked to
31 milestones in the State's consent order with DOE. The amount of these fines is reported to be larger
32 than \$100 million, "but currently \$104 million of that compliance order is based solely on
33 violations for which there is no dispute of fact," according to NMED.
- 34
- 35 3. The NNMCAB hereby recommends that DOE propose SEPs in settlement of recent enforcement
36 actions by NMED that meet the following restrictions:
- 37 • Is consistent with the NM Hazardous Waste Bureau's Hazardous Waste Act: Civil Penalty
38 Policy, EPA SEP policy and Region 6 implementing guidance
 - 39 • Is consistent with or advances the New Mexico Hazardous Waste Act and Resource
40 Conservation and Recovery Act
 - 41 • Has adequate nexus to the violation as determined in the New Mexico Hazardous Waste
42 Bureau's sole discretion
 - 43 • Involves the management or administration of the project or funds by the NMED; and benefits
44 the community and/or environment impacted by the violation while providing educational
45 opportunities with contractors and public institutions.
- 46

- 1 4. The Community shall be defined as those citizens of the area defined by the northern New Mexico
2 Counties represented by the NNMCAB and any other affected areas. DOE shall seek the guidance
3 and assistance of the NNMCAB in the submittal, selection and ranking of those SEPs to be put
4 forward to the NMED in lieu of a portion of the fines and penalties imposed by that agency.
5
- 6 5. The NNMCAB further recommends that funding for any SEPs and/or fines and penalties do not
7 come out of LANL's annual EM budget.
8

9 **Intent**

10 It is the intent of the NNMCAB to ensure that DOE-EM funds programmed and allocated for the cleanup and
11 mitigation of legacy waste disposal at LANL are used for those purposes and for the benefit of the citizens of
12 northern New Mexico, and any other affected areas, where the basis of the violations cited by NMED occurred.
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14

15 **References**

- 16
- 17 1. Los Alamos Monitor, State May Add to Fines, February 11, 2015
- 18 2. Albuquerque Journal, New Mexico to Fight DOE's Refusal to Pay WIPP Fines, February 13,2015
- 19 3. New Mexico Hazardous Waste Bureau, Hazardous Waste Act: Civil Penalty Policy, March 2007
- 20 4. EPA Guidelines for Supplemental Environmental Projects