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Watchdogs: Lab Deal Missing Cleanup

By Adam Rankin
Journal Staff Writer

New Mexico and the U.S. Department of Energy may have struck a deal recently that will allow \$43 million in federal funding to flow into environmental programs at Los Alamos. But there is at least one item missing from the new agreement that previously played a prominent role in the state's attempt to force cleanup on its own terms.

That is the state Environment Department's finding, issued May 2, 2002, that legacy waste at Los Alamos may present an "imminent and substantial endangerment" to human health and the environment.

Laboratory watchdog groups also claim the agreement, which won't be available to the public until early May, is also missing any real cleanup requirements and instead focuses on producing risk reports and characterizing unknown waste.

Knowing that the U.S. Environmental Protection Agency considers that Los Alamos hosts more chemical and radioactive solid waste management units than any other facility in the country, the state's finding of "imminent and substantial endangerment" may not seem surprising. But to the laboratory and

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DOE, it was a big deal, because it set up important legal consequences.

Most significantly, the determination allowed the state to unilaterally file a corrective action order against Los Alamos late in 2002, requiring extensive "fence-to-fence" waste characterization and cleanup.

The DOE and University of California immediately challenged the finding.

First, they argued the state can't issue the determination of potential endangerment because it was based mostly on the release or discharge of radionuclides, over which the state has no legal jurisdiction.

They argued the state couldn't prove with any substantial evidence that legacy wastes posed an imminent threat and that the procedure for making the determination didn't even meet the state's own requirements.

Los Alamos County became concerned about the finding's implications when the County Commission learned the state might post warning signs around certain laboratory facilities.

Fearful the signs might cause unwarranted concern among the county's citizens, the commission, along with state Rep. Jeannette Wallace, R-Los Alamos, met with Richardson and New Mexico Environment Department Secretary Ron Curry, who assured them the signs wouldn't be posted.

"We decided to not put up the signs because of the concern it would hurt the entire community, not just the laboratory," Curry said.

He acknowledged the signs were "a little bit of a bargaining chip" in the disagreement with DOE.

But now, after about 16 months of closed-door negotiations, the state's finding of imminent and

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substantial endangerment is no longer necessary, following the agreement announced March 19 reached between DOE and the state.

"It is not so much that the finding of imminent and substantial endangerment was removed," explained NMED attorney Charlie de Saillan, as it is that the new consent order, agreed to by DOE, "is based on a different statutory provision, which doesn't require a finding of an imminent and substantial endangerment."

The order, which is a consent order because both DOE and NMED have agreed to it, is now under a different section of the state's Hazardous Waste Act, section 10, that doesn't give the state as much or as broad authority as it would have under section 13, as it was originally issued in 2002.

Curry said that is fine by the state because the new agreement is in the form of a legally enforceable document with stipulated penalties if DOE and Los Alamos fail to perform according to the agreement.

Furthermore, de Saillan said, the consent order also now includes a provision under the state's Solid Waste Act.

That allows the state to include in the order a broader range of wastes, such as high explosives and perchlorate, that couldn't have been included originally.

So, does the state believe 60 years of legacy waste at Los Alamos still poses a threat to human health and the environment?

"I believe that the order will continue to demonstrate that those health concerns will show themselves in different ways," Curry said.

As far as DOE is concerned, waste at Los Alamos did not and still doesn't pose a threat.

"The bottom line is the department believes that the operations at Los Alamos National Laboratory have not contributed to an imminent or substantial endangerment," said DOE's Joe Vozella, assistant manager of facility operations at Los Alamos. "We are in the midst of a robust cleanup and now are on track to be done by 2015."

Despite the strong contention by both DOE and the state that the agreement, as Richardson said on March 19, "resolves all outstanding cleanup issues," Greg Mello of the Los Alamos Study Group— a lab watchdog organization— wonders how those claims can be made when the document that the agreement is based on isn't even public yet.

If the new agreement is largely based on the state's original corrective action order, as state officials have said, then Mello said it isn't going to require any real cleanup.

He said the original order did not have waste investigations that would address how cleanup should be performed; rather, they were designed to determine whether or how much waste should be cleaned up.

"NMED has not asked for a cleanup plan and has no plan; DOE does have a plan, which is not to clean up," he said.

NMED's de Saillan said the original state order does have provisions for cleanup, but they aren't detailed and don't make up the bulk of the order.

The reason, he said, is that much of the wastes still haven't been characterized and the public should have some input when it comes to deciding how cleanup gets done.

"If we were to build into the order detailed cleanup, we would prejudice the remedy before the public has had a chance to participate in the cleanup process," he said.

And, unlike the original order, the new consent agreement has enforceable deadlines for final implementations and remedies.

"The consent order goes a little further than what was in the unilateral order," he said.



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