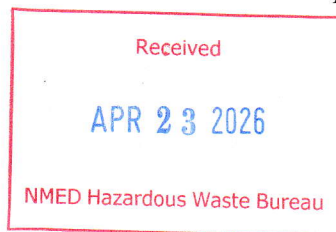


**DEPARTMENT OF ENERGY**  
Environmental Management Los Alamos Field Office (EM-LA)  
Los Alamos, New Mexico 87544

EMLA-26-196-2-1

Date: April 23, 2026

Mr. JohnDavid Nance  
Designated Agency Manager  
New Mexico Environment Department  
2905 Rodeo Park Drive East, Building 1  
Santa Fe, NM 87505



Subject: Elevation of Dispute to Tier 1 Officials Pursuant to Section 25 of the Compliance Order on Consent

References: 1. EM-LA Letter to NMED, EMLA-26-156-2-1, Subject: *Initiation of Consent Order Technical Dispute Resolution*, Dated: March 18, 2026  
2. NMED Letter to EM-LA, Subject: *Response to March 18, 2026, Unsupported Invocation of Consent Order Technical Dispute Provisions*, Dated: April 1, 2026

Dear Mr. Nance,

This letter elevates to Tier 1 Officials the dispute regarding the Department of Energy (DOE) Environmental Management Los Alamos Field Office's (EM-LA's) invocation of the technical dispute resolution process under Section 25 of the 2016 Compliance Order on Consent, as modified in September 2024 (Consent Order) for the following matters: (1) applicability of the Consent Order to the New Mexico Environment Department (NMED) and its bureaus; and (2) NMED's direction of November 18, 2025, to cease all injection operations associated with DP-1835.

EM-LA maintains that the Consent Order applies to NMED (and its bureaus) for matters within the scope of the Consent Order, and that NMED's direction of November 18, 2025, to cease all injection operations associated with DP-1835 constitute technical disputes subject to Section 25 of the Consent Order, as EM-LA described in Reference 1.

NMED's response of April 1, 2026 (Reference 2) rejected EM-LA's initiation of technical dispute resolution for the two matters. NMED also asserted that the Consent Order does not apply to the NMED Ground Water Quality Bureau for the matters at issue. EM-LA respectfully disagrees and reaffirms that these matters fall within scope of the Consent Order, as well as the technical dispute resolution provisions of Section 25.

The matters in dispute are as follows:

1. **Applicability of the Consent Order to NMED and its Bureaus:** Whether the Consent Order, executed by the Secretary of NMED on behalf of NMED, applies to NMED and its bureaus—including the Ground Water Quality Bureau—for matters within the scope of the Consent Order.

- 2. NMED's Direction of November 18, 2025, to Cease All Injection Operations Associated with DP-1835:** Whether NMED's November 18, 2025 direction to cease all injection operations associated with DP-1835 is subject to the technical dispute resolution provisions of Section 25, whether NMED's direction aligns with the Consent Order's requirements and objectives, and the fact that EM-LA disputes NMED's direction.

Additionally, consistent with Section 25 of the Consent Order, NMED's April 1, 2026, response should have been signed by NMED's Designated Agency Manager. It was not; rather, NMED's April 1 response was signed by John Rhoderick, NMED's Deputy Secretary.

Consistent with Section 25.D.1 of the Consent Order, DOE requests that the Tier 1 Officials for both Parties meet and confer. DOE's written statement of position is enclosed. To support timely coordination, DOE requests confirmation of NMED's Tier 1 Official and proposes scheduling this meeting within the next two weeks.

DOE remains committed to resolving these matters through the Consent Order dispute resolution procedures.

If you have questions, please contact the undersigned at (505) 692-4261 or [Brian.Harcek@em.doe.gov](mailto:Brian.Harcek@em.doe.gov).

Sincerely,

 Digitally signed by BRIAN  
HARCEK  
Date: 2026.04.23  
16:29:13 -06'00'

Brian G. Harcek  
Designated Agency Manager  
Department of Energy  
Environmental Management  
Los Alamos Field Office

Enclosures:

1. Written DOE Statement of Position, Dated: April 23, 2026

cc:

EM-LA

Brown, Rose

Evans, John

Harcek, Brian

Hetrick, Kara

Ingalls, Tyler

Krommer, Michael

Lehman, Sean

Majure, Allison

Pansoy-Hjelvik, M.E. Lisa

Pyram, Stanley

Rana, Tahir

Reine, Robert

Silvera, Jeffrey

[Emla.docs@em.doe.gov](mailto:Emla.docs@em.doe.gov)

N3B:

Alexander, William

Maupin, Christian

[RegDocs@em-la.doe.gov](mailto:RegDocs@em-la.doe.gov)

Pueblo de San Ildefonso

Moquino, Governor Christopher

Martinez, Raymond

## Statement of Position

### I. Introduction

This Statement of Position is submitted by the U.S. Department of Energy (DOE) Environmental Management Los Alamos Field Office in accordance with Section 25.D of the 2016 Compliance Order on Consent, as modified in September 2024 (Consent Order). DOE seeks resolution of the dispute with the New Mexico Environment Department (NMED) regarding: (1) applicability of the Consent Order to NMED and its bureaus; and (2) NMED's direction of November 18, 2025, to cease all injection operations associated with Discharge Permit 1835 (DP-1835).

### II. Disputed Issues

- 1. Applicability of the Consent Order to NMED and Its Bureaus:** Whether the Consent Order, executed by the Secretary of NMED on behalf of NMED, applies to NMED and its bureaus—including the Ground Water Quality Bureau (GWQB)—for matters within the scope of the Consent Order.
- 2. NMED's Direction of November 18, 2025, to Cease All Injection Operations Associated with DP-1835:** Whether NMED's November 18, 2025 direction to cease all injection operations associated with DP-1835 is subject to the technical dispute resolution provisions of Section 25, whether NMED's direction aligns with the Consent Order's requirements and objectives, and the fact that DOE disputes NMED's direction.

### III. DOE's Positions

#### 1. The Consent Order Applies to NMED and All Its Bureaus

The Secretary of NMED executed the Consent Order on behalf of NMED, binding the entire Department—not just the Hazardous Waste Bureau (HWB). Section 1.A of the Consent Order states that it is issued by NMED under the Hazardous Waste Act (HWA) and the Solid Waste Act (SWA), and for the limited purpose of addressing corrective action activities concerning groundwater contaminants listed at 20.6.2.3103 NMAC.

Section 2.C further clarifies that the Consent Order scope includes corrective actions for releases of hazardous waste and groundwater contaminants. Multiple NMED bureaus are involved in implementing these requirements. The Consent Order does not limit its applicability to a single bureau, and the Secretary's execution of the Consent Order binds NMED (not just a single NMED bureau). NMED's attempt to carve out the GWQB is unsupported by the text or regulatory history.

#### 2. The Dispute Over NMED's Direction of November 18, 2025, to Cease All Injection Operations Associated with DP-1835 is Subject to the Consent Order

The interim measures (IM) for the hexavalent chromium plume, including injection operations under DP-1835, are integral to the corrective action process for the Hexavalent Chromium Campaign described in the Consent Order.

The technical basis for the GWQB's directive relies on screening-level data not intended for regulatory decision-making, as acknowledged by NMED staff in public presentations. Moreover, the Expert Technical Review Team and prior NMED testimony have emphasized the importance of continuous IM operations to prevent plume migration and protect human health and the environment.

NMED's direction to cease injection operations constitutes a technical dispute under Section 25 of the Consent Order, as it directly impacts the scientific and engineering approach to corrective action for the Hexavalent Chromium Campaign.

### 3. NMED's April 1, 2026, Arguments Are Without Merit

NMED's assertion that the Consent Order does not apply to the GWQB because the Water Quality Act is not cited as a governing authority is misplaced. The Consent Order's scope includes groundwater contaminants regulated by the GWQB, and the Secretary's execution of the Consent Order binds the entire Department.

NMED's refusal to participate in the technical dispute resolution process is a direct violation of Section 25 of the Consent Order. The Consent Order is clear: ***"Any dispute that arises under this Consent Order shall be subject to the procedures of this Section 25"*** unless the Consent Order expressly excludes such dispute from dispute resolution.<sup>1</sup> This includes technical disputes between DOE and NMED. And the Consent Order does not expressly exclude this dispute from dispute resolution.

Finally, NMED's technical justification for the November 18, 2025, directive is inconsistent with the technical record, including the findings of the Expert Technical Review Team and NMED's own prior statements.

## IV. Basis and Significance of the Dispute

Applicability of the Consent Order to NMED—and its bureaus—is fundamental to the integrity and enforceability of the Consent Order. All Milestones, Targets, and Campaign Completion Dates are (or may be) impacted by this dispute.

The technical dispute over NMED's direction to cease injection operations for the hexavalent chromium plume interim measures directly affects the ability of DOE to implement effective corrective actions for the Hexavalent Chromium Campaign, protect human health and the environment, and comply with the Consent Order's requirements. In fact, all Milestones and Targets for the Hexavalent Chromium Campaign are impacted by this dispute.

NMED's refusal to engage in the dispute resolution process set forth in the Consent Order disregards the plain language of the Consent Order, undermines the collaborative framework established by the Consent Order, threatens the orderly and effective remediation of legacy

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<sup>1</sup> Section 25.A of the Consent Order (emphasis added). Section 25 contains the dispute resolution procedures.

contamination at Los Alamos National Laboratory, and is inconsistent with the general purposes and guiding principles of the Consent Order.<sup>2</sup>

## **V. Proposed Resolution**

DOE requests that the designated Tier 1 Officials for both Parties:

1. Affirm that the Consent Order applies to NMED and all its bureaus for matters within the scope of the Consent Order.
2. Recognize that dispute over NMED's November 18, 2025 direction to cease all injection operations associated with the hexavalent chromium plume IM is: (a) a technical dispute; and (b) subject to the dispute resolution provisions of the Consent Order.
3. Engage in good faith negotiations among Tier 1 Officials to resolve the disputed issues.
4. Agree to the following actions:
  - a. Restart the IM—including operation of CrIN-4 and CrIN-5 for injection—as soon as possible.
  - b. Collaboratively explore and evaluate IM operations after restart with the aim of informed and adaptive operations, consistent with the Purpose and Scope of the Consent Order.
  - c. Collect groundwater data at SIMR-3 while operating the IM to further enhance our understanding of the regional groundwater aquifer.
  - d. Establish a framework (building upon our shared commitment to adaptive site management) to define procedural steps to ensure technical exchange and mutual agreement prior to subsequent modification or cessation of IM operations.

## **VI. Conclusion**

DOE remains committed to fulfilling its obligations under the Consent Order and working collaboratively with NMED to protect human health and the environment. DOE expects NMED to comply with the dispute resolution provisions of the Consent Order and engage constructively in resolving these critical issues.

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<sup>2</sup> As set forth in Section 2.B.6 of the Consent Order, a general purpose of the Consent Order is to “facilitate cooperation, exchange of information, and participation of the Parties.” Similarly, as set forth in Section 2.D.2 two guiding principles of the Consent Order are: (1) “Establishing an action-oriented approach to achieve mutually-agreed upon results that makes optimum use of available resources”; (2) “Performing work in a cost-effective and efficient way that provides full protection of human health and the environment”; and (3) “Conducting collaborative regular, periodic reviews of environmental remediation and clean-up practices.”