



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

EMLA-26-200-0-1

Date: May 5, 2025

JohnDavid Nance
Hazardous Waste Bureau Chief
Designated Agency Manager
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505-6313

Subject: Notification of NMED Failure to Comply with Section 23.E, and Credits Owed by NMED to DOE in Accordance with Section 23.E.6.a, of the Compliance Order on Consent (Modified September 2024)

Dear Mr. Nance:

The U.S. Department of Energy (DOE) and the New Mexico Environment Department (NMED) both have obligations under the 2016 Compliance Order on Consent (Modified September 2024) (Consent Order). These obligations facilitate the cleanup of legacy waste at Los Alamos National Laboratory (LANL) through corrective action activities.

To advance these corrective action activities, DOE has submitted numerous documents to NMED for NMED's review and approval. Unfortunately, NMED has failed to complete its review of many of these documents within the requisite timeframes specified in the Consent Order. NMED has also failed to comply with the procedures specified in the Consent Order when NMED fails to meet the requisite timeframes.

NMED's failure to complete these reviews within the requisite timeframes and to comply with the Consent Order procedures has adversely impacted DOE's ability to conduct necessary cleanup actions, as well as adversely impacted schedules and cost. Because of NMED's failure to review documents within the requisite timeframes, as of April 30, 2026, **NMED owes DOE a credit of \$4,483,571.43**. The remainder of this letter details NMED's obligations under the Consent Order—and NMED's failures—regarding document reviews.

1. NMED Failed to Review Documents Within the Requisite Timeframes

Section 23.E.1 of the Consent Order states: "***NMED shall review and approve or disapprove of documents listed in Appendix D that are submitted by DOE within the timeframes set forth in Appendix D.***" (emphasis added). Appendix D of the Consent Order specifies review times for documents subject to NMED approval under the Consent Order. Enclosure 1 to this letter is Appendix D of the Consent Order.

Enclosure 2 is a list of documents DOE has submitted to NMED in accordance with the Consent Order, which NMED failed to review within the requisite timeframes (as of April 30,

2026). These documents were not reviewed by NMED within the requisite timeframes set forth in Appendix D of the Consent Order. And it is worth noting that (as of April 30, 2026) for two of these documents: (1) DOE submitted the documents over **2 ¾ years ago (i.e., 1,105 days)**; and (2) NMED exceeded its review time by over **895 days (366 days since the Consent Order was modified)**.

Section 23.E.2 of the Consent Order enables the Secretary of NMED to grant an extension of time for good cause shown for NMED to review and approve or disapprove of documents listed in Appendix D of the Consent Order. DOE has received no notice that the Secretary of NMED granted an extension of time for any of the documents listed in Enclosure 2.

2. NMED Failed to Provide the Requisite Written Notifications to DOE and Publicly Post the Notifications on NMED's Website

Section 23.E.3 of the Consent Order details specific actions NMED must take if NMED does not review and approve or disapprove the documents listed in Appendix D by the requisite timeframes. **NMED failed to take these actions for all the documents listed in Enclosure 2.**

- **Notify DOE in Writing** (Section 23.E.3.a of the Consent Order)
NMED is required to notify DOE in writing within 10 business days after the deadline that NMED did not meet the timeframe. In its written notice, NMED is required to:
 - (1) state the reasons why NMED did not meet the timeframe;
 - (2) provide a new deadline by which NMED will review and approve or disapprove of the pertinent document;
 - (3) include the Secretary of NMED's written grant of the extension of time for good cause shown as an enclosure; and
 - (4) state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframes set forth in Appendix D in the future.

NMED failed to provide this notification to DOE for all the documents listed in Enclosure 2.

- **Post Notification on NMED's Website** (Section 23.E.3.b of the Consent Order)
Within 15 business days of sending the written notice detailed above to DOE, NMED must post the written notice on NMED's website. **NMED failed to post this notification for all the documents listed in Enclosure 2.**

3. NMED Failed to Discuss Document Reviews at the Last Annual Public Meeting

Section 23.E.5 of the Consent Order requires NMED at the annual public meeting to: (1) discuss all instances during the prior fiscal year in which NMED did not review documents within the requisite timeframes; and (2) state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframes set forth in Appendix D in the future.

The last annual public meeting was held on January 14, 2026. During that public meeting, NMED failed to: (1) discuss any instances during the prior fiscal year in which NMED did not review documents within the requisite timeframes; and (2) state the actions NMED has taken, or is taking, to ensure it will meet the requisite timeframes set forth in Appendix D.

In accordance with the Consent Order, DOE expects NMED to convey this information at all subsequent annual public meetings.

4. NMED Must Award DOE Credit for NMED's Failure to Review Documents

Under Section 23.E.6.a of the Consent Order, if NMED does not complete its review to approve or disapprove the document within the timeframe set forth in Appendix D (or within the extension, if granted by the Secretary of NMED for good cause), then NMED must award DOE a credit for each day beyond the applicable deadline that NMED fails to complete its review of the document. Section 23.E.6.a states:

If NMED either:

- i. Does not receive an extension from the Secretary of NMED pursuant to Section 23.E.3.a.iii and does not complete its review to approve or disapprove the document within the original timeframe set forth in Appendix D, or*
- ii. Receives an extension from the Secretary of NMED pursuant to Section 23.E.3.a.iii and does not complete its review to approve or disapprove the document within the extended timeframe set forth in Section 23.E.3.a.ii,*
then NMED shall award DOE a credit equivalent to the amount of stipulated penalties that DOE would be obligated to pay to NMED for a delinquent Milestone under Section 36.A.5 for each day beyond the applicable deadline that NMED fails to complete its review of the document. Such credit may then be used by DOE to offset any future stipulated penalties it may incur under this Consent Order or other fees that DOE may owe to NMED.

(emphasis added).

Based on Section 23.E.6.a of the Consent Order, DOE calculates the credit owed by NMED (as of April 30, 2026) to DOE to be **\$4,483,571.43** due to NMED's failure to review the documents identified in Enclosure 2, in accordance with Section 23.E of the Consent Order.

5. Impacts of NMED's Failure to Review Documents within the Requisite Timeframes

NMED's failure to review documents within the requisite timeframes set forth in Appendix D of the Consent Order has significant impacts to legacy cleanup at Los Alamos National Laboratory. For example, such impacts include the following:

- Due to NMED's failure to timely review and approve six Investigation Reports, DOE is unable to request Certificates of Completion (CoCs) documenting completion of remediation activities for 121 Solid Waste Management Units (SWMUs)/Areas of Concern (AOCs). Remediation activities performed for these SWMUs/AOCs are documented in the six Investigation Reports.
- Due to NMED's failure to timely review COC requests for four SWMUs, DOE is unable to pursue the necessary LANL Hazardous Waste Facility Permit (HFWP) Permit Modification Requests (PMRs) to move these sites from Table K-1 to Tables K-2 or K-3 of the LANL HFWP, as appropriate. DOE's inability to pursue PMRs to the LANL

HWFP for SWMUs/AOCs—which have been remediated in accordance with the Consent Order—results in unnecessary annual LANL HWFP fees to NMED of \$1,000 per SWMU/AOC. NMED’s delay results in unnecessary annual expenditures that could otherwise be used to execute Consent Order corrective action activities.

- NMED’s failure to review documents within the requisite timeframes set forth in Appendix D of the Consent Order delays corrective action activities and contributes to the erroneous perception that DOE legacy cleanup work is behind schedule and being conducted too slowly.

Finally, by failing to publicly post written notifications when NMED failed to review documents within the requisite timeframes, and failing to discuss NMED’s untimely document reviews at the annual public meeting, NMED is disregarding both: (1) its obligations under the Consent Order; and (2) a general purpose of the Consent Order set forth in Section 2.B.7 to “provide for effective public participation.”

If you have questions, please contact the undersigned at (505) 692-4261
brian.harcek@em.doe.gov.

Sincerely,

Brian Harcek, Director
Designated Agency Manager
Office of Quality and Regulatory
Compliance Department of Energy
Environmental Management
Los Alamos Field Office

Enclosures:

1. Consent Order, *Appendix D NMED Document Approval List and Review Timeframes*
2. NMED Document Review Times & Calculated Stipulated Penalties

cc:

EPA

King, Laurie, Region 6, Dallas, TX

LANL

Hyatt, Jeannette

NA-LA

Lucero-Torres, Geraldine

Pueblo de San Ildefonso

Martinez, Raymond

Santa Clara Pueblo

Chavarria, Dino

Pueblo of Cochiti

England, Charles

Jemez Pueblo

Madalena, Clarice

NMED

Dhawan, Neelam

Robinson, Kylian

Yanicak, Steve

N3B

Alexander, William

Clayman, Brian

DeRoma, Silas

Edwards III, Robert

Ellers, Kate

Hebdon, Joel

Kerrigan, Deborah

Lesinski, Mark

Maupin, Christian

Rodriguez, Lawrence

Smith, Bradley

n3brecords@em-la.doe.gov

EM-LA

Evans, John

Hetrick, Kara

Martinez, Renee

McCrary, Thomas

Pyram, Stanley

Rana, Tahir

Reine, Robert

Theisen, Phil

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Public Reading Room (EPRR)

PRS website

APPENDIX D

NMED DOCUMENT APPROVAL LIST AND REVIEW TIMEFRAMES

Documents Subject to NMED Approval and NMED Review Timeframes

	Document	Section	Review Time (Days)
1.	Work Performed and Documentation Submitted under 2005 Consent Order	6.B	120
2.	Revised Interim Facility-Wide Groundwater Monitoring Plan	12.B	90
3.	RCRA Facility Investigation Work Plan	13.C	90
4.	RCRA Facility Investigation Report	13.G	120
5.	Area of Contamination Request	14.C	30
6.	Interim Measures Work Plan	15.C	90
7.	Interim Measures Report	15.D	120
8.	Emergency Interim Measures – Interim Measures Report	15.E	120
9.	Corrective Measures Evaluation Report	16.E and 16.G	280
10.	Corrective Measures Implementation Plan	18.B	210
11.	Corrective Measures Implementation Report	18.C	280
12.	Accelerated Corrective Action Report	19.D	120
13.	Presumptive Remedy Implementation Plan	19.E	150
14.	Presumptive Remedy Completion Report	19.E	180
15.	Certificates of Completion	21.B	120

Document Number	Document Title	Document Type	Date Submitted to NMED	NMED Response Date	NMED Review Schedule Per Consent Order Appendix D (# Days)	Time at NMED (# Days)	NMED Exceeded Review Time (Yes/No)	Number of Days Exceeded (Based on Date Submitted to NMED)	NMED Exceeded Review Time Past Revised Consent Order (9/30/2024 Start Date) (Yes/No)	Number of Days Exceeded Past Revised Consent Order(9/30/2024 Start Date)	Stipulated Penalty Credit (\$)
EM2023-0186	Addendum to the Phase II Investigation Report for Middle Los Alamos Canyon Aggregate Area, Rev 2	Investigation Report	4/20/2023	1/29/2026	120	1015	Yes	895	Yes	366	\$ 517,857.14
EM2023-0184	Middle Los Alamos Canyon Phase II Investigation Report, Rev 3	Investigation Report	4/20/2023	1/29/2026	120	1015	Yes	895	Yes	366	\$ 517,857.14
EM2023-0337	Investigation Report for South Ancho Canyon Aggregate Area, Revision 1	Investigation Report	6/29/2023	2/17/2026	120	964	Yes	844	Yes	385	\$ 545,000.00
EM2023-0429	Corrective Measures Evaluation Report for Material Disposal Area H (Revision 2)(MDA-H)(TA-54)	Corrective Measures Evaluation Report	9/29/2023	Pending	280	944	Yes	664	Yes	297	\$ 419,285.71
EM2024-0241	Phase II Investigation Report for North Ancho Canyon Aggregate Area, Revision 1	Investigation Report	6/13/2024	4/14/2026	120	686	Yes	566	Yes	441	\$ 625,000.00
EM2024-0239	Phase II Investigation Report for Threemile Canyon Aggregate Area, Revision 1	Investigation Report	6/18/2024	Pending	120	681	Yes	561	Yes	457	\$ 647,857.14
EM2024-0390	Request for Certificate of Completion for One Solid Waste Management Unit 54-005 in the Middle Canada del Buey Canyon Aggregate Area (without controls)	Certificate of Completion	7/19/2024	Pending	120	650	Yes	530	Yes	457	\$ 647,857.14
EM2025-0193	Investigation Report for Twomile Canyon Aggregate Area, Revision 1	Investigation Report	7/31/2025	1/20/2026		173	Yes	173	Yes	173	\$ 242,142.86
EM2025-0009	Request for Certificate of Completion for Solid Waste Management Units 33-010(c), 33-007(c), and 33-011(d) in the Chaquehui Canyon Aggregate Area (1 With 2 Without)(3)	Certificate of Completion	2/13/2025	1/27/2026	120	348	Yes	228	Yes	228	\$ 320,714.29
									Total Credit Owed:		\$ 4,483,571.43