NMED

New Mexico Environment Department

NORTHERN NEW MEXICO CITIZENS ADVISORY BOARD

MAY 18, 2016

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Cabinet Secretary
New Mexico Environment Department

Revised Consent Order

- Public Comment Period
- Overview of Comments Received
- NMED Perspective
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Public Comment Period

- Revised Consent Order (CO) was issued March 30th, for Public Comment
  - 45-day public comment period
    - March 30, 2016-May 16, 2016
    - Extended to **May 31, 2016 at 5:00 PM**
  - Have been several opportunities for public comment:
    - March 30th NNMCAB Meeting
    - Regional Coalition of LANL Communities – April 8th
    - NMED-sponsored Open House meeting- April 28th
    - Meetings with individual stakeholders
    - Today's NNMCAB Meeting
      - Report on comments received to date

Overview of Comments Received

- 12 sets of written comments received to date
  - Regional Coalition of LANL Communities (RCLC)
  - Northern New Mexico Citizens Advisory Board (NNMCAB)
    - Passed two resolutions supporting priorities & "Campaign Approach"
  - Rio Arriba County Commission
  - NGO groups
  - Individual Stakeholders
  - Private Company
  - EPA Region 6
- Comments are wide-ranging
  - Received comments that support and oppose the draft CO

Comments Received

- Comments received to date are focused on the following areas:
  - Public Participation
    - Limiting public participation requirements
    - Access to documents
  - Campaign Approach
    - Changes in future priorities
  - Annual Planning Process / Budget
  - Editorial/Grammatical Changes
    - Definitions
    - Designated Agency Managers (DAMs)
    - Regulatory citations
    - Minor clarifications

Comments Received (Cont'd)

Public Participation

- RCLC: "In regards to deciding the best remedy for a given cleanup campaign our Board wants to ensure each of our communities and/ or the general public are alerted on all proposed remedies to ensure they can provide input on their suggestion for the best possible final cleanup. For instance, as it pertains to options for selecting the final remedy for MDA-A at TA-21, we advise the area be fully remediated versus a cap-and cover solution, which will allow for a greater return to the community on cleanup investment."
- John Zemblidge: "It is also my understanding that the New Consent Order would expressly limit public participation requirements which is contrary to the 2005 Consent Order. It is important that all milestones, targets, annual negotiations and modifications mandate the opportunity of public review and comment. It is essential that the State and Lab make all communications, documents and submittals specified in this Consent Order readily available to the people of New Mexico and the world."
- Karen Weber: "The new Consent Order would expressly limit public participation requirements which would be opposite from the 2005 Consent Order. I request that all milestones, targets, annual negotiations and modifications require the opportunity for public review and comment."

Comments Received (Cont'd)

Public Participation (Cont'd)

- Barney Trujillo (Rio Arriba Co. Commissioner): "I appreciate the openness and transparency that NMED has used to explain and gain input for the new Consent Order. I believe there is nothing to hide in this process and it will only be made strong through this open public process."
- John Ahlquist: "Once again I urge the activist groups to use their energy and skill to agitate for cost-effective and prompt cleanup to a reasonable standard. At the 2010 public hearing n the renewal of the 1989 RCRA permit [which was over ten years behind schedule] I noted that these groups had significant influence on NMED. I thought this influence would be useful to push for a bias for action. I sent them {Concerned Citizens for Nuclear Safety [CCNS], Nuclear Watch New Mexico [NWNM], Southwest Research and Information Center [SRIC] and Citizen Action New Mexico [CANM]} an email asking if we could work together to push for action – no response. So, I sent them a registered letter – they were returned to me unopened. NWNM and SRIC accepted the letter but there was no response. I had at least hoped for some dialogue but that did not happen because they weren't interested. I can only conclude that they feign concern for cleanup but their real interest is an inordinate influence. NMED should listen to their viewpoints but stand firm and not be unduly swayed by them."

Comments Received (Cont'd)

Campaign Approach

- NNMCAB Resolution No. 2016-01: "The NNMCAB recommends to DOE and LANL EM to use the "Campaign Approach" for all remaining clean-up work included in the current and/or future CO."
- RCLC: "We are in support of current cleanup milestones listed in Appendix B and future campaigns proposed in Appendix C. Most critically, we want to ensure Chromium plume remediation, RDX cleanup, and TA-21 are among the highest priorities based on risk and community benefit."
- Stoller Newport: "The Campaign Approach is a powerful feature of this Draft Consent Order which provides for CERCLA-like grouping and consideration of remedies and risks. Excellent."
- Several Individual Stakeholders: "This draft represents a big step backwards in achieving the goal of genuine, comprehensive cleanup of the Laboratory. The Environment Department should keep the current 2005 Consent Order with necessary revisions to the cleanup schedule and withdraw this draft Consent Order."
- Nuke Watch: "The proposed 2016 Consent Order would abandon the 2005 Consent Order provisions and replace them with a so-called "Campaign Approach" under Section VIII. Under Section VIII.A.3, it would be up to the DOE, not the regulator at the New Mexico Environment Department, to select the timing and scope of each "campaign."
- Barney Trujillo (Rio Arriba Co. Commissioner): "The new "risk-based" approach of the NMED draft Consent Order for Los Alamos National Laboratory (LANL) means the material that could have the greatest harm to the public gets addressed first. I support that rationale."

Comments Received (Cont'd)

Annual Planning Process

- Stoller Newport: "Great process step to acknowledge the realities of the Federal budget process outside the control of DOE, yet provide for dialogue and transparent communication. Good to provide for flexibility if appropriations change, but it is also important not to abuse this provision. Recommend setting more specific threshold criteria for events that would warrant change outside the annual cycle."

- Nuke Watch: "Enforceable deadlines for cleanup tasks would apply no more than one year into the future. Deadlines would be based on "Campaigns" negotiated each year with DOE with no public participation and opportunity to comment on the schedule. To add insult to injury, the annual schedule would be determined by funding at DOE's discretion, rather than the schedule driving the funding, which was the fundamental approach of the 2005 Consent Order."

Key Changes To Date

- Split the RDX IM and Remedy into separate campaigns
- Add provisions into Section VIII regarding involvement from San Ildefonso Pueblo & LA County
  - Changes to priorities/milestones
  - Changes to campaigns
- Add provision for use of SEPs in lieu of stipulated penalties
- Increase amount of stipulated penalties
- Add provision requiring annual public meeting on Appendix B revisions
- Considering addition of "end date"
- Other minor editorial changes

NMED Perspective

- Revised CO:
  - Focuses on accelerating cleanup of legacy contamination
  - Provides plan for how/when all cleanup work will be completed
    - Supports discussions on future funding levels for LANL
  - Provides flexibility to NMED and LANL to enable success rather than delay cleanup

Next Steps

- Public input is critical – we want your feedback
- Continue meeting with individual stakeholders
- How can you help?
  - Provide comments
  - Pass resolutions
  - Send letters of support

Next Steps (Cont'd)

Reminders:

- The March 1, 2005 CO is still in effect until it is replaced by a revised version.
- Public Comment Period ends at 5:00 PM on May 31, 2016
  - Written comments (including email) may be sent to:
    - Kathryn Roberts: kathryn.roberts@state.nm.us

Questions?