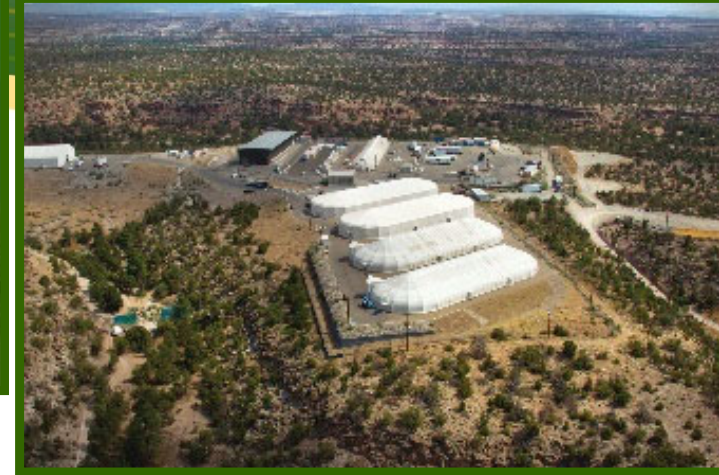




U.S. DEPARTMENT OF
ENERGY

OFFICE OF
**ENVIRONMENTAL
MANAGEMENT**



DOE and NMED Settlement Agreement for 2016 Compliance Order on Consent



ENVIRONMENTAL MANAGEMENT
SAFETY ♦ EFFICIENCY ♦ TRANSPARENCY

Ellie Gilbertson, Deputy Manager
Environmental Management Los Alamos Field Office
September 18, 2024



On August 30, 2024, the U.S. Department of Energy (DOE) and the New Mexico Environment Department (NMED) executed a Settlement Agreement:

- Resolves litigation regarding 2016 Compliance Order on Consent (Consent Order), the principal regulatory document governing legacy cleanup at Los Alamos National Laboratory (LANL)
- Involves revisions to the Consent Order
- Includes \$333,000 payment to Hazardous Waste Emergency Fund
- Requires NMED to complete its review of 221 Certificates of Completion within a year of execution of Revised Consent Order
- Intended to compromise disputed claims; it does not constitute and shall not be construed as an admission of any wrongdoing, noncompliance, or liability
- Settlement Agreement and Revised 2016 Consent Order can be found [here](#) or on the DOE EM-LA website under Information Center / 2016 Consent Order





Section 8: Campaigns, Five-Year Schedules, and Annual Planning Process

- Establishes process for setting Campaign Completion Dates for each Campaign
- Clarifies process for prioritizing Campaigns
- Divides Campaigns into Class A and Class B Campaigns
 - Class A Campaigns: Campaigns with sufficient clarity on cleanup that a 5 year schedule can be developed. DOE and NMED establish: (1) Milestones for upcoming fiscal year and following fiscal year; and (2) a Campaign Completion Date (which could be beyond 5 year schedule). DOE is subject to stipulated penalties for missed Milestones and Campaign Completion Dates
 - Class B Campaigns: Too uncertain to establish a Campaign Completion Date at this time. DOE and NMED establish Milestones only for upcoming fiscal year, as well as nonbinding Targets for following two fiscal years. DOE is subject to stipulated penalties for missed Milestones





Section 11: Deferred Sites

- Specifies 4 circumstances when a site may be deferred:
 - Located within testing hazard zone of active firing sites at LANL
 - Associated with active LANL operations
 - Inaccessible due to land access issue
 - Another reason not addressed in the other 3 circumstances (subject to NMED approval)
- For sites deferred for active firing sites or facility operations, DOE must provide notice to NMED, confer with neighboring Pueblos and local governments, and notify public
- DOE to provide an annual report on status of all deferred sites





Overview of Major Revisions to 2016 Consent Order

Section 23: Preparation/Review/Comment on Documents

- Changes regarding document review times to conform with applicable provisions of pertinent NMED regulations
- Clarifies timeframes by when NMED is to complete its review of documents

Appendix D: NMED Document Approval List and Review Timeframes (New)

- Specifies documents subject to NMED approval and document review times

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





Section 25: Dispute Resolution

- Disputes classified as either “technical” or “non-technical”
- Process differs depending on whether the dispute is “technical” or “non-technical”
 - **Technical Disputes:** Scientific or engineering disagreements
 - Seek resolution among first-tier officials at NMED and DOE
 - Referral to technical expert selected by mutual agreement
 - Expert decision is final and binding
 - **Non-Technical Disputes:**
 - Seek resolution among first-tier officials at NMED and DOE
 - NMED and DOE engage in non-binding mediation
 - Referral to agreed-upon third-party adjudicator
 - NMED or DOE may pursue judicial review of third-party adjudicator decision





Section 34: Public Participation, Pueblo and Local Government Conferrals, Independent Audits, and 10 Year Reviews

- Identifies public participation opportunities in Consent Order
- ✓ DOE hosts public meetings at least once per quarter
- ✓ DOE maintains email address for public comments or suggestions
- ✓ Distinguishes public meetings from Pueblo and local government conferrals
- Provides for independent audits (Appendix G details procedures for independent audits)
- DOE and NMED to conduct a review of Consent Order every ten years

✓ = Actions already implemented by DOE EM-LA

[Pages 79-81]

[Appendix G]





Section 36: Stipulated Penalties

- Missed Milestones are subject to stipulated penalties
- Missed Campaign Completion Dates are subject to stipulated penalties
- When a Milestone is extended beyond the fiscal year, it does not cease to be a Milestone. DOE and NMED agree on whether: (1) a substitute Milestone is established in lieu of the extended one; or (2) extended Milestone remains subject to stipulated penalties based on the extended date

