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Edition:-Journal North Page:-1**

Order Gives Lab 11 Years To Clean Up

Adam Rankin Journal Staff Writer

Water Oversight Still a Hang-Up

Los Alamos National Laboratory will have 11 years to complete a "fence-to-fence" environmental cleanup and could face stiff penalties of up to \$3,000 a day for noncompliance, all enforceable by the state, if a draft corrective action order becomes final.

The 271-page document was released on Wednesday for a 30-day public comment period.

Unless the state, the Department of Energy and the Environmental Protection Agency are able to work out a short-term agreement on the oversight and monitoring of surface water contamination at the weapons laboratory, the entire cleanup order, which took more than two years to hammer out through closed-door negotiations, could be in jeopardy.

"I will not sign the final order until this surface water agreement is completed," state Environment Department chief Ron Curry said in a statement released with the order. "Surface water cleanup and monitoring are a key piece of this holistic LANL cleanup."

New Mexico is one of only five states that do not have authority to govern or regulate surface water contamination within their own borders. Instead, it is handled by officials at the EPA Region 6 offices in Dallas. The state has been working toward gaining full authority to regulate surface water, but doesn't expect to achieve primacy until 2006.

State officials argue that an interim agreement -- called a Federal Facility Compliance Agreement -- between the state, DOE and EPA that governs surface water monitoring at LANL is needed to protect New Mexico's waters.

NMED Hazardous Waste Bureau chief James Bearzi said failing to get such an agreement could "sink" the cleanup order, but he said the state has a commitment from EPA to get the agreement in place.

"I think the likelihood of that is pretty good, especially now that everything else is in place," NMED spokesman Jon Goldstein said.

Curry said the 60 years of legacy waste at LANL and the ensuing cleanup effort is a perfect example of why the state needs to gain the authority to regulate surface water quality.

"If we had surface water primacy today, we wouldn't need this side agreement," he said.

The order itself is a dense document that lays out responsibilities and legal recourse for each of the parties involved -- DOE, LANL, NMED and the University of California, which operates LANL.

LANL spokeswoman Linn Tytler said the laboratory has been meeting the required timetables of the order since 2003 and now has about 750 "solid waste management units" to remediate.

A primary reason for the two-year fight between the state and DOE was due to the state's attempt to regulate through the order radionuclide waste, which DOE argued is beyond state jurisdiction. Negotiations eliminated all state-mandated requirements to deal with such waste in the current draft order, because DOE has agreed to provide monitoring data voluntarily.

However, Bearzi said the state reserves the right to compel DOE and LANL to provide radionuclide information through legal means, should they fail to do so voluntarily.

Jay Coghlan, executive director of Nuclear Watch of New Mexico, sees DOE and LANL's concession to voluntarily provide radionuclide data as a "big win" for the state.

"On the downside, this is not cleanup; I hope it leads to cleanup," he said.

Greg Mello, director of the laboratory watchdog organization the Los Alamos Study Group, is more pessimistic about the state's order and its ability to enforce cleanup.

"The only potentially firm cleanup requirement that I see is the ground-water cleanup... in Chapter Eight," but the standards are vague and there are no explicit cleanup milestones, he said.

He said the state could have accomplished nearly everything through the laboratory's state-issued operating permit, and with more authority and public involvement.

"Which is a big loss for the democratic process and a big loss for the power of the state as a whole... it would make every citizen a potential inspector," he said.

Bearzi said the state doesn't see it that way and that the order does put a firm date -- 2015 -- on cleanup.

"The state believes the consent order covers compounds beyond the scope of the (operating permit)," including perchlorate, nitrates and high explosives, he said. The permit also would not have allowed the state to establish fines, as it does in the order, he said.

"We believe the enforceability of this consent order is much more expeditious and gives the state a stronger stance than the permit," Bearzi said.

NMED's Goldstein also noted that aside from the public comment period for the draft consent order, the public will have separate opportunities to comment on every site-specific cleanup remedy proposed.

If you go

WHAT: Public comment on LANL cleanup order

WHEN: 7-9 p.m. Wednesday

WHERE: Cities of Gold Hotel in Pojoaque PHOTO: b/w

CURRY: Holding out for agreement



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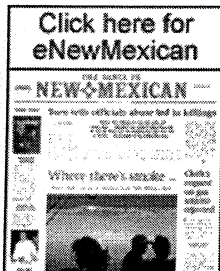
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State, LANL reach cleanup deal

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DIANA HEIL | The New Mexican
September 2, 2004

If everything goes as planned, Los Alamos National Laboratory will clean up all of its hazardous waste by 2015 or face fines and lawsuits.

"All of the historical contamination that has been there since the 1940s will be eliminated," said Charlie de Saillan, an attorney with the New Mexico Environment Department. The estimated cost is \$760 million, according to the lab.

Negotiators with the Environment Department and the U.S. Department of Energy spent nearly two years drafting this agreement. At the outset, the federal government challenged New Mexico's order for investigation and cleanup at LANL.

Finally, on Wednesday, the state released a revised proposed Order of Consent, which requires studies and remediation of groundwater, soil and sediments at the lab. The public has 30 days to comment on the document. The proposal does not cover radioactive waste, however.

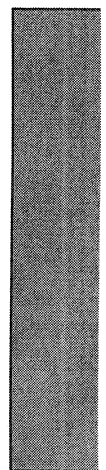
At the earliest, the agreement could go into effect in November. That depends on revisions based on public comment, plus the signatures of DOE and the University of California, which runs the lab.

But there's one more "monkey in the wrench," as Jay Coghlan of Nuclear Watch of New Mexico, an environmental group, sees it. Ron Curry, secretary of the state Environment Department, said he won't sign the order unless DOE and the U.S. Environmental Protection Agency give New Mexico authority over surface water in a separate agreement.

"Surface water clean up and monitoring are a key piece of this holistic LANL cleanup," Curry said. "As such, I will not sign the final order until this surface water agreement is completed."

New Mexico is one of a few states without jurisdiction over surface water, Coghlan said.

If the Order of Consent comes to pass, it will replace an old system for addressing hazardous waste. For decades, the Environment Department has wanted LANL to clean up its mess. But past efforts haven't been forceful enough, according to de Saillan.



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Currently, the state works through the "extremely vague" corrective-action section of LANL's hazardous-waste permit.

Under the order of consent, the state instead would tell LANL what to do to properly investigate and contain waste -- with a set of deadlines. The specific language would make it easier to enforce, de Saillan said. "We're not leaving it to them (LANL) to sort of make it up as they go along."

Lab director Pete Nanos expressed support for the agreement Wednesday.

"As a demonstrable measure of the laboratory's good faith, we have been meeting the required timetables of the order on consent and using the required processes, even while negotiations continued in 2003 and 2004 to reach final agreement," lab spokeswoman Linn Tytler said.

The Environment Department said 1,900 solid-waste sites must be cleaned up. But Tytler said that figure should be lowered to roughly 750 sites.

Some sites are under DOE jurisdiction only, she explained. Moreover, "we have received official notice of 'no further action required' from the U.S. Environmental Protection Agency at more than 700 of those sites," she said.

Environmentalists looking for tangible cleanup tasks in the order say they can find little more than requests for studies. "No one knows where and what is buried up at Los Alamos," Environment Department spokesman Jon Goldstein explained. "So investigation needs to come before we can choose the best way to clean up."

After studies on the waste, the options for cleanup will be brought before the public for comment. Then the Environment Department secretary must approve the lab's plans for getting it accomplished. "Under the law, it's enforceable in a court of law," Goldstein said.

Environmental groups have mixed reviews on the proposal. Coghlan said it contains victories for the Environment Department. Contaminants, as defined in the order, include explosives, perchlorate, hazardous waste and hazardous constituents. Also, DOE and UC agreed to provide data on radioactive contamination to the Environment Department.

"We're strongly in favor of this ... order and really salute the Environment Department for having the guts and sticking it out," he said on behalf of Nuclear Watch of New Mexico.

On the other hand, Greg Mello of the Los Alamos Study Group blasted it. "Well, it's a dog. There's no actual cleanup orders. The closest we come is the groundwater cleanup."

He searched for a definition of cleanup. "They could just sit there and watch it," he said.

Mello said the order gives New Mexico "a lot more control over the investigation process." But he questioned the need for more studies since DOE basically knows which sites are most important to clean up.

"If Hercules felt he needed to count the piles of dung in the Augean stables, he would have neither counted them successfully nor cleaned up the stable," Mello said.



"In the real world, as in the fable, you just have to start digging. You count as you go."

How much of a threat lab waste poses to New Mexicans is hotly contested. The state believes it has proved that LANL's hazardous waste "may be an imminent and substantial endangerment to health or the environment."

But DOE and the University of California disagree, noting the state bases endangerment on the presence of soil and groundwater contamination alone.

Arguments fly back and forth for pages as agencies debated the proposed consent order.

"A threat to groundwater is particularly serious in New Mexico, an arid state that relies heavily on its groundwater resources," the Environment Department retorted. "Approximately 90 percent of New Mexico's population uses groundwater for its drinking water."

Besides serving Los Alamos, White Rock and Bandelier National Monument, the regional aquifer beneath the LANL facility connects with the aquifer that serves the city of Santa Fe.

In e-mailed comments Wednesday, Tytler stressed that contaminants in the aquifer present no immediate risk to human health. "The fact is, drinking water in the Los Alamos area has not been adversely impacted by laboratory actions," she said. "All drinking water produced by the Los Alamos County water-supply system meets federal and state drinking-water requirements."

Public comment welcome

The New Mexico Environment Department will tell the public about its proposal for making Los Alamos National Laboratory clean up hazardous waste by 2015. The meeting will be from 7 to 9 p.m. Wednesday at the Cities of Gold Hotel in Pojoaque.

A 30-day public comment period on the proposal starts now and ends Oct. 1. To have your comments considered by the New Mexico Environment Department, you must include your name and address and make sure the department receives your letter or e-mail by 5 p.m. Oct. 1.

Send comments to: James Bearzi, Hazardous Waste Bureau Chief, New Mexico Environment Department, 2905 Rodeo Park Drive East, Building 1, Santa Fe, N.M., 87505-6303.

Or send e-mail to: hazardous_waste_comment@nmenv.state.nm.us

To view the proposal and other documents between 8 a.m. and 5 p.m. weekdays, visit the New Mexico Environment Department Hazardous Waste Bureau, or Los Alamos National Lab Community Relations Reading Room, 1619 Central Ave., in Los Alamos.

Visit <http://www.nmenv.state.nm.us/HWB/lanlperm.html>.

Critics Say Lab Pact Missing Cleanup Clause

BY ADAM RANKIN
Journal Northern Bureau

SANTA FE — 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 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 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.

State airs lab proposal for environment cleanup

THE ASSOCIATED PRESS

LOS ALAMOS — The state Environment Department has released a draft environmental corrective action order for what it calls "fence-to-fence" cleanup at Los Alamos National Laboratory.

The department said the proposal, unveiled Wednesday, requires comprehensive investigation and cleanup of environmental contamination at the northern-New Mexico lab, including remediation of disposal areas and contaminated ground water.

The proposal sets a completion date of 2015 for the cleanup work.

"This order will ensure that LANL is held responsible for the environmental contamination it created," Environment Secretary Ron Curry said. "An enforceable order puts New Mexicans in control of LANL cleanup and gives us the power to make sure this important work is completed."

The agreement between the state and the lab was first announced in March by U.S. Sen. Pete Domenici, an Albuquerque Republican, and Gov. Bill Richardson. It resolved a 16-month deadlock between the state, LANL, the Energy Department and the University of California, which manages the lab.

ON THE NET

New Mexico Environment Department:
www.nmenv.state.nm.us
Los Alamos National Laboratory: www.lanl.gov

The agreement was supposed to be released in May, but it was delayed because the state and the Environmental Protection Agency were trying to negotiate oversight of surface water pollution, which is regulated by the regional EPA office in Dallas.

Environment Department spokesman Jon Goldstein said the state decided to release the draft order and work on the oversight issue later. He said the state hopes to have full oversight authority by 2006.

The public has 30 days to comment on the 271-page proposal.

At the earliest, it could go into effect in November depending on revisions and the signatures of DOE and UC officials.

Lab Director Pete Nanos expressed support for the proposal.

Lab spokeswoman Linn Tytler said Los Alamos, as a measure of good faith, has been meeting the required timetables of the order and using the required process-

es even while negotiations were underway.

The lab estimates the cleanup will cost \$760 million.

But environmentalists looking for tangible cleanup tasks in the order say they can find little more than requests for studies.

"What NMED has produced is an environmental science welfare program and little more," said Greg Mello, director of the Los Alamos Study Group.

He said the order gives the state more control over the investigation process, but he questioned the need for more studies since DOE knows which sites are most important to clean up.

"No one knows where and what is buried up at Los Alamos," Goldstein said. "So investigation needs to come before we can choose the best way to clean up."

After the studies, cleanup options will be brought before the public for comment. Then the environment secretary must approve the lab's plan for getting it accomplished.

Contaminants, as defined in the order, include explosives, perchlorate, hazardous waste and hazardous constituents. While the order doesn't cover radioactive waste, DOE and UC agreed to provide the state data on such contamination.

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State Stands Behind Lab Cleanup Order

Adam Rankin Journal Staff Writer

POJOAQUE -- The chief of the state Environment Department's Hazardous Waste Bureau held firm to his position that a proposed "fence-to-fence" cleanup order for Los Alamos National Laboratory does require cleanup, not just investigations and planning -- despite direct challenges by some environmentalists that cleanup is actually limited.

James Bearzi, NMED's Hazardous Waste chief, told a gathering of about 30 people Wednesday night at the Cities of Gold Hotel that the draft Order on Consent "is as far as the state can go" in requiring cleanup under state and federal laws.

"Yes, there are hard cleanup dates," he said, noting that all environmental remedies need to be implemented by 2015, even if they are not all complete by then.

Bearzi went through the main points of the draft order -- the result of months of closed-door negotiations between the state, LANL and the Department of Energy and University of California, which runs the laboratory. The public has until 5 p.m. Oct. 1 to submit comments, which Bearzi said will be incorporated into the final version if NMED believes they will improve the order. He said DOE, LANL, UC then have to agree on any changes.

Greg Mello, director of the nonprofit LANL watchdog organization the Los Alamos Study Group, pushed Bearzi to point to a single specific cleanup requirement in the draft order.

Bearzi replied that there are, in fact, simple cleanups going on right now and that each site has a specified end date for remediation. But specifics have to come later for most of the complicated sites, he said, after investigations are carried out and after the public has a chance to comment on the prescribed actions.

"It is a plan to develop a cleanup plan," Mello said after the meeting. "That isn't how it has been described in public."

Bearzi said the order sets a nationwide precedent.

"This is a big deal because most agreements that govern cleanup at DOE sites don't have stipulated penalties," he said. Penalties for not complying with the order start at \$1,000 a day and jump to \$3,000 a day.

"DOE is taking the state of New Mexico seriously and I think for the first time," he said.

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Forum on LANL Dump Sought

Adam Rankin Journal Staff Writer

Lab Has Plans To Expand Waste Site

A citizens' group funded by the U.S. Department of Energy wants the people of northern New Mexico to know more about government plans to expand a 65-acre radioactive waste dump at Los Alamos National Laboratory.

The Northern New Mexico Citizens Advisory Board doesn't think people know much about LANL Area G, which has received nearly 11 million cubic-feet of radioactive waste since 1957. The board wants to hold a public forum on the government's plans, which will increase the dump site by about 50 percent.

"The (Citizens Advisory Board) wants to hold this to clarify the issues; part of our charter is to educate the public and educate the board," said Lorelei Novak, the board's public outreach coordinator.

She said the board is hoping to hold the forum shortly after the first of the year.

The forum aims to present various viewpoints and accurate information on Area G, and uncover what is known about the waste dump.

Board chairman Tim DeLong said the time is right for a public forum on the waste site, a target of perpetual attacks from environmental and anti-nuclear groups that want to see the site closed and cleaned up.

But activist Greg Mello, director of the Los Alamos Study Group, cautioned against investing too much effort or hope in an informal forum that carries no weight and may be inspired by questionable DOE public-relations motives.

"The (citizens board) is accountable only to DOE," because DOE funds them and has in the past exerted its control over the board by disbanding it and reconstituting it with new members, he said.

Nonetheless, Mello said, it is important for people to know the government plans for Area G.

"They are going to dispose of a lot of waste (at Area G) and that is the important thing that people should understand," he said.

LANL spokeswoman Kathy DeLucas said the lab will run out of disposal space at the dump, where low-level radioactive waste is buried in a series of unlined pits, in 2006.

"We have been working with DOE on plans to develop another operating zone, called Zone 4, which is an additional 33 acres next to the current operating zones," she said.

That expansion, given projected waste generation estimates, will provide enough space for LANL's low-level radioactive waste for another 100 years, she said.

Low-level waste includes such items as gloves, papers, boxes and plastic sheeting, but does not necessarily mean they have a low level of contamination. Low-level waste can include some highly contaminated materials, with long- or short-lived radiation.

Mello said Zone 4 contains numerous archaeological sites and ancient puebloan ruins that would likely be destroyed by any expansion. He discounted LANL's estimate that an expansion into Zone 4 will last another 100 years.

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LANL Bid Includes Cleanup Contract

Adam Rankin Journal Staff Writer

Draft Calls For Separate Firm

A small but significant clause in the draft request for proposals to operate Los Alamos National Laboratory lays out a new future for how environmental cleanup and management of the most controversial waste sites will be handled at the nuclear weapons research facility.

Work that has until now been the responsibility of the main contractor, the University of California, will soon be assigned to a separate contractor in an effort to improve efficiencies and cut overhead costs, according to federal officials.

Beginning as soon as 2007, the next primary operator of the laboratory will no longer be responsible for environmental restoration work, nor for a significant component of waste management at the laboratory, according to the draft criteria released last week by the National Nuclear Security Administration.

Energy Secretary Spencer Abraham announced in April 2003 that the LANL contract would be put up for bid for the first time in the laboratory's 61-year history following a series of security failures and financial management problems. University of California has operated LANL since 1943, but its contract to run LANL expires at the end of September 2005.

Management of LANL's Radioactive Liquid Waste Treatment Facility, Technical Area 54 -- including the radioactive waste dump known as Area G, cleanup of legacy wastes, decontamination and decommissioning, as well as responsibility for all legacy wastes and environmental restoration could be included in the separate contract.

"For the taxpayers, we need to do whatever we can to make the process more efficient, while fulfilling the mission," said John Ordaz, assistant manager for environmental management for NNSA at the Los Alamos Site Office.

Other Energy Department and NNSA sites, including Oak Ridge in Tennessee and Idaho National Environmental and Engineering Laboratory, have separate cleanup contractors, he said.

"We are trying to get efficiencies in the program" by reducing overhead costs, he said.

Since 1993 about \$700 million of taxpayer money has been poured into environmental cleanup programs and investigations at LANL. Environmentalists and New Mexico's two senators, Jeff Bingaman, a Democrat, and Pete Domenici, a Republican, have expressed concerns that LANL and the Energy Department have little to show for all the money that has been spent on cleanup there and around the country over the years.

Those worries culminated in a nationwide plan to speed up environmental cleanup for a lower cost at the Energy Department's facilities. The so-called "accelerated" plan could cut \$100 billion and 30 years off

cleanup, according to federal officials.

Ordaz said the effort to improve cleanup efficiencies and cut costs at LANL by creating a separate cleanup contract is part of an effort that has been in the works for several years. The new contract start date of 2007 also coincides with NNSA's takeover of environmental management responsibilities from the Energy Department, he said.

"We are not saying that the laboratory folks are not doing a good job," he said, but by creating a separate contract for cleanup the government can get a better deal.

Environmental groups view the proposal with mixed reactions.

"We have some real concerns that a new layer of bureaucracy is being created that will use up resources and prevent shovels being put in the ground to remove the waste that is threatening our ground water," said Joanie Arends, director of the watchdog group Concerned Citizens for Nuclear Safety.

"We'd like to see more information about how this is going to be a better system," she said.

But others support the action and say it is a move they touted years ago.

"We've been trying to make that happen for ten years," but the effort was blocked, said Greg Mello, director of the Los Alamos Study Group.

"It was just felt that almost anybody would be better (than University of California) -- some real environmental contractor who was used to producing actual work," he said. "Contractors who work for private industry are expected to get things done."

Jay Coghlan, director of Nuclear Watch of New Mexico, said he sees the provision "as a slap in UC's face" for doing a poor job over the years.

"Sure, let's give it to someone who specializes in it, but ... we'd really like to see contractors from within the state get that job," he said.

Ordaz said NNSA will form a review board over the next few months, similar to the one that generated the LANL contract criteria, to develop a scope of work for the cleanup contract that will be open to competitive bids.