LANL proposal leaves waste sites in place

▶ *State regulators say that decision has yet to be made*

By JEFF TOLLEFSON
The New Mexican

Los Alamos National Laboratory would not clean up nuclear and hazardous materials buried in nine waste dumps, according to a draft "accelerated cleanup proposal" prepared by the lab and local officials with the U.S. Department of Energy.

The proposal is geared toward the Bush administration's proposal to revamp cleanup throughout the weapons complex by creating an expedited cleanup fund to reward alternative agreements with state regulators. The Environment Department has signed with DOE a parallel "letter of intent" agreeing to support the accelerated cleanup efforts, while asking for an additional $1 million annually to do the extra work.

In concert, the two documents are an effort to access the new expedited cleanup fund. Environmental activists fear this kind of unofficial bargaining could improperly influence cleanup decisions. For its part, the Environment Department says it has agreed to general priorities, but has not signed off on any of the assumptions laid out by the lab.

Although state and lab officials have long speculated that the nuclear waste dumps might be too dangerous and expensive to cleanup, no official decisions have been released previously. In the current document, despite general mention soil excavation, the lab explicitly states that its proposal for addressing buried wastes "assumes stabilization in place and institutional controls." The latter term generally refers to restrictions on future land uses (houses and day-care centers, for instance, probably would not be allowed).

A $20-million project targeting four "material disposal areas" would be complete by 2008, saving $8 million and 5 years, but "long-lived transuranic waste" like plutonium would remain buried, according to the document. An "evapotranspiration cover" — generally earth and vegetation — would be used to keep moisture from seeping into the waste. Other disposal sites would be addressed in a second, $85-million project to complete cleanup at sites around the old plutonium processing plant at Technical Area 21.

The proposal also states that new legislation establishing a framework for long-term "environmental covenants" would play a key role in allowing land to be used for industrial and recreational purposes. These covenants would prevent housing developments, for instance, if the state allows decides to leave pollution in the ground at levels exceeding the residential standards.

Critics like Greg Mello of the Los Alamos Study Group have long feared that the Bush administration's proposal amounts to an extortion fund: DOE takes away cleanup money, and then gives it back if state regulators agree to more lenient standards. The Bush administration proposed to cut cleanup funding at Los Alamos by 37 percent next year, but the expedited cleanup proposal would bring in an additional $200 million over the next five years.

"What this is going to do is basically preclude the possibility of cleanup happening at Los Alamos," Mello said, noting that such closed-door agreements always influence the direction of negotiations between the regulator and the regulated.

But Greg Lewis of the Environment Department said the accelerated cleanup proposal doesn't preclude anything. While his agency has agreed to support these priorities, including final decisions on various waste dumps, Lewis said the ultimate cleanup decisions must follow the regulatory process, incorporating public participation and investigation of various cleanup alternatives. Removal of buried wastes, for instance, would be included in that study, despite the lab's assertions.

"There's nothing binding on us in terms of what actually happens at the site," Lewis said. "(The lab) decided to make that assumption for the purposes of their funding request, but whether that turns out to be true or not remains to be seen."

According to the lab's proposal, an additional $41 million would go to a groundwater program that depends on monitoring "natural attenuation" of pollutants and the use of passive barriers designed to absorb certain contaminants in canyon bottoms. A long-term groundwater monitoring program, along with an official decision on groundwater protection, also would accelerate cleanup decisions in the canyons and on the mesas, according to the proposal.

Although state and federal officials say a better understanding of groundwater movement and the migration of pollution is essential, regardless of how cleanup moves forward, Mello fears that the monitoring wells are a justification for leaving contamination in place. Rather than cleaning up the waste, he argued, the lab would say it's safe to leave it in place given that the monitoring wells would detect any problems before they endanger the public.

Officials with the lab declined to comment. DOE officials could not be reached Wednesday or Thursday to discuss the document.

BINGAMAN SEEKS CRITERIA FOR DISBURSING EXPEDITED DOE CLEANUP FUNDS

Date: May 27, 2002 -

The Senate Armed Services Committee has approved language in the Defense authorization bill that would require the Department of Energy (DOE) to establish criteria for disbursing funds from its controversial expedited cleanup account. Activists, who have blasted the account as "extortion," are praising the inclusion of the language inserted by Sen. Jeff Bingaman (D-NM).

At issue is DOE plans to reduce its cleanup budget by offering financial incentives to states that sign letters of intent to expedite cleanups. Environmentalists have charged that DOE is blackmailing the states into rewriting contracts using lower cleanup standards. "The account gives the secretary [of Energy] a blank check to extort lower cleanup standards from states in exchange for gobs of taxpayer money at the secretary's discretion," one activist says.

The Defense spending bill, marked up by the Armed Services Committee on May 10, requires the Energy secretary to develop criteria for disbursing money from the cleanup fund and publish them in the *Federal Register*. The criteria would then be subject to a 45-day public comment period. If the secretary chooses not to establish such criteria, all the money from the funds reverts to the sites where it was expended during fiscal year 2002. *Relevant documents are available on InsideEPA.com.*

According to the report that accompanied the bill, "The committee is concerned that DOE has substantially underfunded the cleanup accounts and is at risk of violating several of the cleanup agreements."

The net result of the program is that more waste will be left behind at DOE sites, the activist says. "If I say I can clean your office windows faster, cheaper and cleaner, I can do that by only cleaning half the window."

Activists have also charged that DOE is pitting states containing nuclear facilities against one another in a race to secure money from the dwindling expedited cleanup fund, pointing out that DOE has awarded almost half of the $1.1 billion fund to the first two states to sign agreements with the agency.

Tennessee signed a letter of intent with DOE on May 15 to pursue an accelerated cleanup for the Oak Ridge site, making it the second state to do so after Washington. Tennessee's $105 million combined with Washington's $433 million brings the total amount of money awarded from its expedited cleanup fund to $538 million of the total $1.1 billion potentially available under the fund. New Mexico and Idaho are reportedly close to signing letters of intent with DOE for expedited cleanup funds as well, according to sources in those states.

Activists say the letters of intent contain purposefully vague language. "The devil's in the details," says one source. Activists point to DOE's proposed plan to leave waste onsite at Hanford as proof that the agency will do so elsewhere (*Superfund Report*, May 13, p18).

"We are closely monitoring these proposals," the source says.

Source: Superfund Report via InsideEPA.com
Date: May 27, 2002
Issue: Vol. 16, No. 11

Los Alamos Monitor

Friday, May 31, 2002

ENVIRONMENT

Contamination cleanup poses more questions

By ROGER SNODGRASS
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The New Mexico Environment Department wraps up its public question and answer sessions this week concerning its draft order detailing provisions for accelerated environmental investigations and cleanup of contamination at Los Alamos National Laboratory.

There were more questions than answers at Thursday night's meeting in Santa Fe, as new initiatives by the lab, Department of Energy and the Environment Department itself came to light, distracting attention from the state's action, a "Section 13 Order" under the authority of the state Hazardous Waste Act.

The administrative order, a comprehensive plan to fully investigate and fully clean up waste sites at LANL, details specific requirements for dealing with high priority sites and ongoing projects. The draft is based on a formal finding of "imminent and substantial endangerment" from the release of contamination by the laboratory into the environment.

Meanwhile, the laboratory has notified the department of its intention to dispute that finding in court, according to state officials.

Linn Tytler, speaking formally for the laboratory after the meeting, said, "We share the interests of NMED and New Mexico citizens and will

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CONTAMINATION Laboratory disputes findings of DOE

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continue our efforts to reduce the laboratory's impact on the environment."

She added, "We disagree with NMED's determination that '...there may be imminent and substantial endangerment to human health and the environment.'"

The Environment Department has maintained that, while courts have not ruled on the matter in New Mexico, elsewhere courts have supported a broad interpretation of the regulator's right to make such a finding, even without an immediate and proven risk, if there could be a potential risk in the future.

James Bearzi, hazardous waste bureau chief for the department, said, "At the very least there's groundwater contamination that the department believes is certainly derived from laboratory operations."

That alone could justify the finding, he implied.

Also discussed during the meeting was news that state and federal officials were about to reach an agreement on speeding up cleanup work in the weapons complex statewide.

During the public meeting in Santa Fe, Environment Department officials were asked if the pending national agreement would supercede the massive cleanup order they were proposing.

Bearzi described the letter of intent in the works among the state, DOE, and the Environmental Protection Agency as "an agreement in principle" that describes "high and lofty principles."

"It's just a letter," he said, "and not legally enforceable. It does not supercede any part of the order."

Blake Trask of the Los Alamos Study Group pursued the question, noting that the letter of intent appeared to rely upon the hypothetical passage of a new state law allowing land use covenants that might weaken restoration requirements. DOE land proposed for remediation and transfer to Los Alamos County, for example, might be cleaned up to industrial standards, rather than residential standards, effectively lowering the cost and potentially the environmental condition of the land.

Bearzi agreed that the department has favored passage of such a law in the past at the state legislature, but said that under current law the "can't get it done without l ting residential" levels cleanup.

The Environment Depa ment's order has been cr cized by Nuclear Watch of N Mexico for not doing enou about the cleanup.

In answer to a questi from the audience about schedule, Bearzi said the p was "long on investigation a short on cleanup."

"This should have be done 10 years ago, and the e of the cleanup isn't in here."

Bearzi said his last questi and answer session was to held today at the Northe New Mexico Citizen's Advis Board retreat in Taos.

LANL Eyes Storage Unit

▪ Lab considers building for radioactive waste drums now held in tents

BY JENNIFER MCKEE
Journal Staff Writer

Federal officials are mulling the idea of storing thousands of drums of nuclear waste at Los Alamos National Laboratory in a concrete building, instead of the enormous, white tents that currently house them.

The announcement was hailed by local environmental groups that have been pushing for such a move for years.

Joe Vozella, associate director for facility operations at the Energy Department's Los Alamos office, said Tuesday the team of DOE and lab employees who manage the hundreds of millions of dollars allocated to clean up after the Cerro Grande Fire are thinking of spending around $5 million to build a large nuclear waste storage facility.

"We're looking at something more permanent, more robust, that could potentially withstand an earthquake or some other accident," Vozella said.

Right now, thousands of 55-gallon drums of nuclear waste are stored on a mesa top called Technical Area 54 at the lab, housed in large plastic tents. All of that waste is destined for the Waste Isolation Pilot Plant in Carlsbad and is stored in tents only until it can be shipped.

But according to some earlier lab estimates, that waste may not leave the mesa top for decades, a situation that prompted a coalition of watchdog groups to ask the DOE to store the waste in something safer than a plastic tent.

"We wish that DOE would have done this after the (1996) Dome Fire," said Joni Arends of Concerned Citizens for Nuclear Safety, one of the groups that pushed for a permanent storage building. "It's good that it's happening now."

But the building is not yet a done deal, Vozella said. The lab and DOE have started two new programs recently designed at getting the waste shipped to WIPP sooner. One plan calls for getting the 2,000 most radioactive drums to WIPP within two years. Another calls for getting all the transuranic waste at the site shipped off by 2010. The waste consists of anything from gloves to old machinery contaminated with uranium, plutonium or other radioactive elements.

So just how necessary the proposed new building might be is still up in the air. Vozella said the team has not yet decided to build the structure but is trying to weigh the cost and usefulness against the other two programs.

Furthermore, the building would not house all the drums of nuclear waste at the site, only the 2,000 most radioactive.

The building would be between 7,000 and 10,000 square feet and would be built with money left over from the Cerro Grande Fire.

"We're very happy they're considering it," said Greg Mello of the Los Alamos Study Group, another of the watchdog groups.

INSIGHT & OPINION

Analysis, commentary and ideas

EDITOR: JACK EHN 823-3616, jehn@abqtrib.com. **DEPUTY EDITOR:** LAWRENCE S

Courtesy Los Alamos Study Group

This aerial photograph shows Area G at Los Alamos National Laboratory, where hazardous and radioactive wastes are buried or stored in plastic tents awaiting disposition. Included is radioactive waste destined for the Waste Isolation Pilot Plant near Carlsbad.

Cleanup? What cleanup?

The Department of Energy's environmental cleanup of its two nuclear weapons laboratories in New Mexico has become a sham, and New Mexicans should demand reforms and an honest effort, says today's author, who also accuses state regulators of complicity with DOE

By Greg Mello 8/15/02

Since 1943, the U.S. Department of Energy and its predecessor agencies have designed, built and (once) tested nuclear weapons in New Mexico.

This business, never particularly clean, has left behind a considerable toxic legacy, which still is growing today.

There are more than 2,000 contaminated sites at Los Alamos National Laboratory in northern New Mexico, including 25 or so hazardous and nuclear waste landfills.

There also are old chemical and nuclear waste dumps at Sandia National Laboratories in Albuquerque on Kirtland Air Force Base.

At Los Alamos, groundwater is contaminated in several locations, and low levels of lab-generated and dumped contaminants have begun to show up in a couple of public drinking water wells.

While the contaminant concentrations might remain below standards in public wells for decades to come, this desirable outcome certainly is by no means assured. And not just because of what was done in the past.

Amazingly, the total amount of long-lived nuclear waste being emplaced in the New Mexico biosphere is still increasing, as the lab continues to operate its 1950s-vintage land disposal site, called Area G.

Area G already contains some 63 acres of hazardous and nuclear waste of all kinds. Today, as in decades past, nuclear and PCB wastes are buried in shallow pits and shafts, and covered with as little as 3 feet of earth.

Area G also contains the kind of waste being disposed of at the Waste Isolation Pilot Plant near Carlsbad, but at Los Alamos Lab it's 2,000 feet closer to us, literally stored on the surface.

There has been no formal licensing process for this site, as is required for comparable commercial sites. There is no hazardous waste permit, no closure plan, no commitment to post-closure care and no performance bond.

The New Mexico attorney general said last year that the site has been operating illegally since 1985. Yet, neither Attorney General Patricia Madrid nor the New Mexico Environment Department, which should be regulating the site, wants to force the issue. More than 2,000 individuals, and 27 environmental organizations, have petitioned the Environment Department to close Area G, all to no avail.

Despite all the headlines and new articles about the Los Alamos Lab "cleanup," there are no definite plans to clean up much, if any, of this toxic legacy, at either Sandia or Los Alamos. Most states have negotiated cleanup agreements of some kind with the DOE, but New Mexico has no binding cleanup agreements of any kind as regards either Sandia or Los Alamos.

Money is not the issue. Already, DOE has spent some $701 million at Los Alamos alone on "cleanup," a considerable sum even for DOE. And a few real cleanup projects have indeed been done.

But most of the money, year after year, is spent on studies (the necessary and the unnecessary, the competent and the incompetent). There are enough studies to fill a good-sized room. Much of the money has also disappeared into the lab's infamous "overhead" accounts.

This nuclear waste and environmental contamination is just "hanging out there," as we say, with no clear path to address the long-term risks, no legal "blessing" and no social acceptance. It is a problem for both DOE, as well as for the state Environment Department, not to mention the people of New Mexico.

Even beyond the public health issues, it's a compliance issue — even if the contamination ends up bleeding out slowly enough to avoid exceeding drinking water standards in wells and streams.

And there's no question that it will all leak out. The questions are how soon, how suddenly and how seriously. It's an embarrassment, and it's a potential source of legal problems.

To top it off, the Bush appointees have begun to put the squeeze on the "cleanup" program. This affects not just the two labs but also the state Environment Department, which has for several years been depending on DOE to pay for the outstanding scientists who do surveillance at the DOE facilities.

What can we do?

Up to now, aside from brief moments of glory, the state Environment Department has been rather ineffective in pursuing cleanup at these DOE facilities and particularly so in the case of Los Alamos, where illegal dumping still continues.

DOE and especially Los Alamos Lab push back — and hard. The lab doesn't just generate nuclear waste incidentally, or in small quantities. The lab generates waste massively. DOE expects the lab to bury an additional 19 million cubic feet of nuclear waste at the lab in the next seven decades, more than the lab has buried up to now in its entire history.

Some of this waste, as DOE explains, is far too radioactive to ship on any highway, in any container, and so the dump must remain open.

And, since today's cleanup standard could well influence tomorrow's disposal standard, the thinking appears to be that it's better to have no cleanup at all than risk the future of the weapons program.

How can the state Environment Department resolve the legal and social acceptance issues posed by this situation without antagonizing the labs, while at the same time helping the labs (and itself) fight Bush administration reductions in environmental budget cuts?

In other words, how can the state Environment Department ask the labs to clean up without, well, cleaning up? From DOE's perspective, how can its legal and public perception problems be solved without actually changing behavior or moving much dirt?

And how can a solution be compatible with DOE upper management, which wants to stop the fiscal hemorrhage represented by cleanup, which, nationally, costs as much as the nuclear weapons program itself?

Well, the corporate-types in the Bush administration devised a plan, and state Environment Department Secretary Pete Maggiore has taken the bait. His bright and capable staff have even added a few creative features of their own.

Basically, the answer that meets all these contradictory goals is public deception.

The first move was state Environment Department's. Earlier this year, it found that there might be — "we don't say there IS" — an "imminent and substantial endangerment" of human health and the environment at Los Alamos Lab.

On this basis, which is very true, the state Environment Department issued a "corrective action order." But this order has no actual corrective action in it. What's in a name, anyway? It orders several years of further study, in effect turning back the clock.

As Maggiore explained in his recent press conference, it will help "stabilize" funding. The thrust of all the research, however, which will consume essentially all the funding at the site for years, is not risk reduction but risk assessment. Hey, why rush into anything?

The state department thus created a sponge for cleanup money that will accomplish no cleanup, which Los Alamos Lab can accept.

Then, three weeks later, Maggiore signed an agreement with the DOE called a "letter of intent," which "accelerates completion" of environmental cleanup at DOE facilities in New Mexico — by agreeing there will be very little cleanup done.

In return for signing off on this letter and its supporting documents, the state Environment Department will receive about $700,000 from DOE, just in the first year.

Subsequent payments will no doubt be available upon good behavior. What is happening here is that a few officials in Gov. Gary Johnson's administration are selling an important piece of our environmental inheritance for a mess of porridge.

How can this be happening? Well, for starters,

Please see **CLEANUP?/C2**

TODAY'S BYLINE

Mello is director of the Los Alamos Study Group, a nuclear watchdog organization based in Santa Fe that concentrates on Los Alamos National Laboratory.

TAP IN

To comment on this topic, **write us:** Letters to the editor, The Albuquerque Tribune, P.O. Drawer T, Albuquerque, NM 87103. **Fax us:** 823-3689. **E-mail us:** letters@abqtrib.com.

CLEANUP? *from C1*

the negotiations are secret, which should set off alarms for everybody.

The entire suite of decisions is being made without the public hearings required by law. A few selected outsiders are brought in to provide "cover," the same kind of paternalism used by DOE on the state Environment Department.

But how do the state department and DOE make the risk appear to disappear? Simple: Average it out with words. The state department has agreed to a "watershed aggregate approach," which should "take care" of nearly all apparent problems, by making compliance and cleanup unnecessary at any particular location that might actually be near the contamination.

If this doesn't work, the state department has suggested that "technical infeasibility" might also be employed, a very flexible idea.

And so the sellout goes on, through many complicated stages.

Legally, it may be foolproof. It is certainly beyond the reach of well-intentioned public comment.

Even though the U.S. Senate thinks DOE's new "reform" cleanup strategy stinks to high heaven, the agreements signed in New Mexico have been fully funded so far.

Will our elected officials have the gumption to see through this claptrap and restore the regulatory process to what it should be — a federal commitment and state oversight that ensure a real cleanup, plus funding for it over the long run?

Only if they hear from us, the people who otherwise will be stuck with the contamination. I encourage New Mexicans to stand up and tell their representatives, the DOE and the state Environment Department that we want real, actual cleanup, not words and money for studies.