

New Mexico Environment Department Head to Testify in U.S. Senate Thursday

The subject of the hearing is the program of “deals Mr. Maggiore’s Energy testimony – the “deal” struck with DOE to limit future NMED discretion at NM DOE sites and set up closed decision-making processes for their future – is the subject of a request to investigate to NM Attorney General by 17 environmental groups

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Over the past year, more than 2,000 individuals, as well as 27 New Mexico environmental organizations, have petitioned the Environment Department (NMED) to bring to a halt the unpermitted disposal of nuclear waste at Los Alamos lab, which is done at a place called “Area G.” The Attorney General likewise wrote to NMED on the issue a full year ago, saying that waste disposal at Area G must cease, and that public hearings must be held on what to do with the 45-year-old dump site, now containing about 11 million cubic feet of waste, as well as the other 1,000 or so smaller contaminated sites at Los Alamos.

NMED has disputed neither the factual basis of these requests, nor the law that requires them to close the dump – and hold detailed public hearings. They have made no substantive reply at all to any of these and many other requests.

But now, in the waning months of the Johnson Administration, they are acting,

. NMED officials initially pretended to have no knowledge of the more than 2,000 requests, and needed to be supplied with a database of requesters, not being willing to create one themselves. They expressed contempt to the letter from the Attorney General, the highest law enforcement official in New Mexico. In fact now, NMED is taking steps that will essentially end the possibility of enforcement of hazardous waste law, not just for this administration but for future ones as well. not just throw away all these requests – physically, they already did that, and had to be resupplied with the names from – into has resolved to settle

First, a bit of background. Area G is not a small disposal site. It is visible from all elevated locations from El Dorado to Truchas, because it spans an entire mesa, and is more than 60 acres in area. It is almost full, and so the Department of Energy (DOE), which owns and manages the lab, has already approved four expansion areas for nuclear waste, which it projects to amount to some 19 million cubic feet over the next 70 years – more than has been disposed at Los Alamos up to now. There was no licensing process for Area G, and neither will there be one for any of these other sites.

In addition to Area G, there are some 25 other chemical and nuclear waste disposal sites at Los Alamos, and more than 1,000 other contaminated sites. DOE has spent \$701 million on remediating these sites up to now, nearly all of which has been spent on investigations and

studies, with very little actual “cleanup” to show so far. Of course, since nuclear waste is still being disposed at Los Alamos in unlined shallow pits, the total amount of uncontained nuclear waste on the Pajarito Plateau has been growing throughout the “cleanup” program.

DOE regulates itself as far as Neither Area G nor any of its planned successors has been licensed by the Nuclear Regulatory Commission or any other external body, and official risk assessments meet DOE’s own standards only by assuming that someone will be around, 1,000 years from now, make sure that no one ever lives there. At 1,000 years, the analysis ends.

In May, Secretary Maggiore

Nearly all these petitions paid three dollars apiece to send their request in the form of food cans, each with a label designed to make the can look like a small waste drum, to close the dump, and to hold hearings on cleanup of this and other contaminated sites in Los Alamos, on cans of food (LANL) and at the lab’s 45-year-old chemical and nuclear waste dump, “Area G.”

On May 30, after a months-long secret process, New Mexico Environment Department (NMED) Secretary Pete Maggiore signed an agreement with the DOE, called a “letter of intent,” which purports to “accelerate completion” of environmental cleanup at DOE facilities in New Mexico.

It’s an odd phrase, this “accelerate completion.” What does it mean?

Very loosely translated, the letter and its supporting documents mean something like this: “Regarding DOE environmental responsibilities in New Mexico: we have all experienced a lot of hassle, embarrassment, and expense on this environment thing, so let’s cut to the chase. We’ll cover the nuclear and chemical waste dumps with a couple of feet of dirt, fence ‘em off, and post some signs. With that, we’re outta here. We all agree that DOE has got more important stuff to do, like make bombs. There’s no problem now, and on the average your grandkids should be fine. Here’s some paint for the fences. You’ll need it, because you gotta guard this crap essentially forever.”

How does DOE get NMED “buy-in” to an agenda like this, without involving the public, elected officials, other agencies, and tribes? The answer is very simple: money. They are paying NMED to sign it. No one seems to want to admit that the Johnson Administration is selling an importance piece of our environmental inheritance for a mess of porridge. NMED managers don’t say the letter is a good thing; instead they say – privately, of course – that it is meaningless, that it’s “just a game.”

DOE, however, believes otherwise. They view this letter as a determinative step that will save taxpayers hundreds of millions, if not a billion or more, dollars in long-term cleanup in

New Mexico, and DOE is more than happy to sweeten the deal with a little cash for the suckers in NMED.

Maybe the “innovative cleanup technology” for which DOE has been searching all these years is payola for the regulatory agencies.

But how does one orchestrate such a sell-out? What kind of instrument is this so-called “letter of intent?” It’s not legislation or regulation – although it sets up processes, establishes what’s important, and predetermines outcomes, just like law. It’s not exactly a contract – although it “commits” the parties signing it, and NMED is likely to receive about \$700,000, starting next year, for signing it. It’s not a modification of an environmental permit, so they say, or a new permit – although it is designed to control what is done pursuant to permits and to predetermine the outcome of permitting processes.

If the letter was any of these things, it would be illegal. So it is none of them – and it is all of them. Barring judicial review, it seems to fall between the cracks, into the void where law and prior policy are absent, just like the “creative” business practices of Enron. And it is precisely the world of corporate wheeler-dealers that is the natural home of this deal, because it’s a business deal, plain and simple, the purpose of which is to allow DOE to “buy down,” for mere pennies on the dollar, the agency’s environmental obligations in New Mexico. And that is why the lawyers on both sides wanted it vague – too clear, and it might wake the snoozing watchdogs.

Another way to describe it is as a *reverse* environmental compliance agreement, in which the regulatory agency, in return for payment received, agrees to lower its expectations and comply with what *DOE* wants. In effect, it is NMED which is being regulated. DOE is paying the piper, and now it is calling the tunes. It’s a client relationship, normal in business – but not in government. Until now. In our poor state, DOE’s sovereignty means that it not only gets to make the rules, but make them look normal too. Poor New Mexico – so far from God, so close to Los Alamos.

The really clever thing about this agreement is that the actual, working definitions of its strange phrases are defined elsewhere, *in documents drafted solely by the DOE and its contractors*. Wow! Orwell didn’t think of this! These other documents are a kind of evolving “glossary” which, together with the letter, produces the true meaning of the agreement! It’s our first “post-modern” regulatory agreement! The letter is “vague,” “meaningless,” but the devil’s in the details, in the *DOE-generated* “performance management plan,” which, accordingly to the “letter of intent,” includes: “actions, milestones, responsibilities, business processes, and acquisition strategies necessary to achieve the agreements made in this letter.” The Alice-in-Wonderland scope of this bizarre list hints at the scope of DOE’s *de facto* control of the final outcome.

The Environment Department’s future payments will inevitably depend not only on DOE’s available cash, but also on just how friendly relations are between DOE and the Environment Department. If, as the letter says, they “continue the established partnership” and there is “senior-level [NMED] support to achieve [DOE’s] desired end state,” then future payments are understood to be likely, if for no other reason than to process DOE’s paperwork in a timely manner.

The Environment Department has been receiving payments from DOE for many years now, and these payments have always been a serious conflict of interest. Each year, the Department asks DOE for enough money to keep the staff it’s hired with DOE’s money. It’s also true that this staff does outstanding work, year in and year out. Their diligence and

professionalism has balanced the agency's conflict of interest to some degree – up, that is, to now.

You can bet that if the Environment Department were to initiate enforcement to, say, halt the shocking, unpermitted disposal of nuclear waste at Los Alamos in unlined shallow pits, which, according to the New Mexico Attorney General, has been illegal for the last 17 years, or require *real* cleanup at Los Alamos and Sandia, or just get too damn uppity about *anything*, NMED can kiss its addictive little subsidy goodbye.

DOE's plan to walk away from its toxic legacy in New Mexico is just part of its larger, national scheme to do this in several states. To set up the plan, Mr. Bush's DOE environmental appointees took some \$800 million out of next year's proposed "cleanup" budget and put it into a special category, accessible only to DOE contractors in states where the regulators sign agreements to lower DOE's environmental costs and "accelerate completion" of cleanup. Since by far the easiest way to lower costs and get "done" quickly is to do less cleanup, and since DOE is awarding these scarce funds on a "first-come-first-served" basis, DOE created what amounts to "a race to the bottom," in which states compete with each other to undercut their own long-term interests. Clever, huh?

New Mexico deserves better than this, both in environmental cleanup and in the long-term jobs that will employ New Mexicans in that cleanup. Pete Maggiore has made a deal that in the final analysis really benefits no one. He should quickly rescind his ill-considered signature.