



**MICHELLE LUJAN GRISHAM**  
GOVERNOR

**JAMES C. KENNEY**  
CABINET SECRETARY

December 22, 2021

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

RE: Government Accountability Office Oversight of the Department of Energy Environmental Management Program

Dear Mr. Dodaro

On December 2, 2021, the House of Representatives Committee on Energy and Commerce (Committee) requested the Government Accountability Office (GAO) examine management challenges and other issues at the Department of Energy's (DOE) Office of Environmental Management (EM) that have affected EM's ability to reduce its environmental liabilities and make progress on longstanding high risk areas.

The Committee also requested GAO examine four areas specific to EM's mission, including: 1) DOE Program Management, 2) Minimum safety requirements, 3) Soil and groundwater contamination and 4) Coordination with stakeholders.

The New Mexico Environment Department (NMED) strongly supports such a review and would like to directly share our experiences regarding DOE EM with GAO staff regarding delays in legacy waste clean-up at Los Alamos National Laboratory (LANL) and the lack of transparency related to the prioritization of shipments to the Waste Isolation Pilot Plant (WIPP).

For too long, there has been a chronic lack of substantive remedial progress at LANL which resulted in NMED filing a civil complaint against DOE in New Mexico state court. NMED alleged DOE failed to make progress in the clean-up of contamination as required by a 2016 Compliance Order on Consent. This failure continues despite the DOE EM's congressionally approved budget for clean-up at this site.

In addition, New Mexico is home to the only geological repository for transuranic waste in the United States known as the WIPP. Transuranic waste consists of clothing, tools, rags, residues, debris, soil and other items contaminated with small amounts of plutonium and other man-made radioactive elements. The WIPP is subject to an NMED operating permit and must adhere to the requirements of the permit in order to remain operable in New Mexico and in service to the nation.

Yet, the DOE EM has entered into legally binding settlement agreements with states to prioritize waste shipments to WIPP at the expense of shipments from other states, including New Mexico. This is problematic for both the clean-up of legacy waste at LANL and new waste from pit production at LANL. The practice of DOE EM solely managing waste shipments to WIPP from around the U.S. without first discussing with New Mexico stakeholders – including NMED as its regulator – now merits immediate congressional oversight. Equally problematic is that DOE EM has sought to expand scope of waste streams sent to WIPP. For example, DOE

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revised its interpretation of the definition of “high level waste” and developed a “dilute and dispose” program to ship surplus plutonium from South Carolina to WIPP in a potential manipulation of NMED’s waste acceptance criteria as found in its state operating permit. In another example, DOE EM expressed interest in sending Americium-241 to WIPP which is currently not allowed under the federal Land Withdrawal Act. Finally, a recent trade press article regarding a nuclear waste treatment plant in Idaho, DOE suggested that the possibility of reclassifying a high-level liquid waste stream as a solid waste simply to meet WIPP permit requirements.

On behalf of the State of New Mexico, including its tribal communities, which has born an increased risk to public health and the environment; I welcome and encourage GAO’s oversight of DOE’s EM program. My agency stands ready to assist GAO in support of the Committee’s desire to assure DOE EM reduces environmental liabilities and makes progress on longstanding high risk areas.

To the extent you are interested in beginning such a dialogue, you may reach out to Chris Catechis, Acting Director of the Resource Protection Division, at (505) 469-6521 or [chris.catechis@state.nm.us](mailto:chris.catechis@state.nm.us), or myself at (505) 470-6161 or [james.kenney@state.nm.us](mailto:james.kenney@state.nm.us).

Sincerely,

James C. Kenney  
Cabinet Secretary

Enclosure

Cc: Bruce Baizel, General Counsel, NMED, [Bruce.Baizel@state.nm.us](mailto:Bruce.Baizel@state.nm.us)

Chris Catechis, Acting Director, Resource Protection Division, NMED, [chris.catechis@state.nm.us](mailto:chris.catechis@state.nm.us)

Courtney Kerster, Senior Advisor, Office of Governor Michelle Lujan Grisham,  
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Cathy McMorris Rodgers, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives

Frank Pallone, Jr. Chairman, Committee on Energy and Commerce, U.S. House of Representatives

ONE HUNDRED SEVENTEENTH CONGRESS  
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**House of Representatives**  
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December 2, 2021

The Honorable Gene L. Dodaro  
Comptroller General of the United States  
U.S. Government Accountability Office  
441 G Street NW  
Washington, DC 20548

Dear Mr. Dodaro,

We are writing today to request that the Government Accountability Office (GAO) examine management challenges and other issues at the Department of Energy's (DOE) Office of Environmental Management (EM) that have affected EM's ability to reduce its environmental liabilities.

EM is responsible for the environmental cleanup of sites across the country affected by decades of nuclear energy research and nuclear weapons production. GAO first added the U.S. government's environmental liabilities to its High Risk List in 2017, where it remains to this day. DOE is responsible for \$512 billion, or about 85 percent, of those liabilities.<sup>1</sup> Despite being on its High Risk list, GAO has determined that EM has not demonstrated progress in addressing its environmental liabilities.<sup>2</sup> GAO also found in June that although EM's environmental liability continues to grow, opportunities may exist to reduce future costs.<sup>3</sup>

In an effort to assist us with our oversight of EM's cleanup efforts, the Committee would like GAO to examine the major management challenges at EM that affect its ability to reduce its environmental liabilities and make progress on longstanding high risk areas. The Committee also requests GAO to undertake a series of reviews focused on areas critical to EM's mission,

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<sup>1</sup> Department of Energy, *Fiscal Year 2020 Agency Financial Report* (Nov. 16, 2020) (DOE/CF-0170).

<sup>2</sup> Government Accountability Office, *High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas* (Mar. 2, 2021) (GAO-21-119SP).

<sup>3</sup> Government Accountability Office, *Department of Energy: Environmental Liability Continues to Grow, but Opportunities May Exist to Reduce Costs and Risks* (June 8, 2021) (GAO-21-585R).

including DOE program management, minimum safety requirement costs, soil and ground remediation, and coordination with stakeholders. Specifically, the Committee requests the following from within these four areas:

- 1. DOE program management.** In November 2020, EM issued a Program Management Protocol intended to establish requirements for planning, budgeting, execution, and evaluation. As a first priority, the Committee requests GAO review EM's implementation of this protocol, including the extent to which it addresses gaps in program management leading practices that GAO previously identified in DOE's 2017 Cleanup Policy and the extent to which EM has the federal staff capacity to implement the protocol.<sup>4</sup>
- 2. Minimum safety requirement costs.** In February 2019, GAO reported that recurring activities necessary to maintain EM's sites—such as physical security, health and radiation protection and services, or critical facility and infrastructure maintenance—made up at least \$2.7 billion, or 42 percent, of EM's fiscal year 2018 budget.<sup>5</sup> These recurring activities are known as “minimum safety work.”<sup>6</sup> GAO noted that a former Assistant Secretary for EM stated in 2018 that EM could realize significant cost savings by reducing such minimum safety work and that much of DOE's environmental liability consists of managing this work.<sup>7</sup> Given the proportion of minimum safety work costs on EM's budget, the Committee requests GAO review opportunities to better manage this category of costs, while ensuring the safety of workers at its sites.
- 3. Soil and groundwater remediation.** A key aspect of EM's mission is remediating soil and groundwater contamination, which costs billions of dollars. Further, many of these remediation efforts will continue decades after site closure. The Committee requests GAO review EM's efforts to remediate soil and groundwater contamination, including how requirements vary across sites and any ongoing challenges EM faces in its remediation efforts.
- 4. Coordination with stakeholders.** EM's cleanup efforts often involve coordinating with stakeholders, including state regulators, local communities, tribal governments, and site-specific advisory boards. The Committee requests GAO review EM's efforts to involve stakeholders, including the extent to which EM's efforts align with best practices.

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<sup>4</sup> Government Accountability Office, *Nuclear Waste Cleanup: DOE Could Improve Program and Project Management by Better Classifying Work and Following Leading Practices* (Feb. 19, 2019) (GAO-19-223).

<sup>5</sup> *Id.*

<sup>6</sup> *See* note 4.

<sup>7</sup> *Id.*

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Please have your staff work with Rebekah Jones of the Majority Committee staff at (202) 225-2927 or Marissa Gervasi of the Minority Committee staff at (202) 225-3641 to coordinate the details of this work.

Sincerely,



Frank Pallone, Jr.  
Chairman



Cathy McMorris Rodgers  
Ranking Member



Diana DeGette  
Chair  
Subcommittee on Oversight  
and Investigations



H. Morgan Griffith  
Ranking Member  
Subcommittee on Oversight  
and Investigations



Bobby L. Rush  
Chairman  
Subcommittee on Energy



Fred Upton  
Ranking Member  
Subcommittee on Energy