



Department of Energy
National Nuclear Security Administration
Washington, DC 20585



June 11, 2007

The Honorable Bart Stupak
Chairman
Subcommittee on Oversight and Investigations
Committee on Energy and Commerce
U. S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On January 30, 2007, Thomas P. D'Agostino, then Acting Administrator, National Nuclear Security Administration, U.S. Department of Energy and Dr. Linda Wilbanks, Chief Information Officer, National Nuclear Security Administration, U.S. Department of Energy testified regarding cyber security at the Los Alamos National Laboratory.

Enclosed are the answers to questions for the hearing record

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Renee Wilhite, on (202) 586-7597.

Sincerely,

Scott Kopple
Director
Congressional Affairs

Enclosures



QUESTION FROM REPRESENTATIVE STUPAK

Los Alamos Site Office Staffing

Q4. How many federal professional staff does the Los Alamos Site Office (LASO) have overseeing security, safety and health, and contracting in Fiscal Year (FY) 2004, 2005, 2006, and 2007? What is the proposed staff size for these positions in FY 2008?

A4. The following table depicts federal personnel strength (including Environmental Management personnel) on hand at the Los Alamos Site Office whose primary duties are security (including cyber security), safety and health (including quality assurance), and contracting for FY 2004, 2005, 2006, 2007, and proposed levels for FY 2008.

	<u>FY 2004</u>	<u>FY 2005</u>	<u>FY 2006</u>	<u>FY 2007</u>	<u>FY 2008 (Proposed)</u>
Security	6	9	11	12	15
Safety and Health	31	32	36	39	45
Contracting	3	4	5	4	4

QUESTION FROM BART STUPAK

Q.3 Does NNSA have the authority to disallow a portion of basic operational costs (as opposed to adjusting "fixed" or "at risk" fees) in the LANS contract for failure to perform or to meet rules, regulations or orders? Is LANS assured that it will, at a minimum, receive 100 percent of their operational costs?

A3. Los Alamos National Security is not assured that it will receive 100% of its operational costs. The NNSA has the authority to disallow all costs that it finds to be unreasonable, not properly allocable under the contractor's accounting system, or expressly unallowable under the terms of LANS' contract. Generally, the NNSA may properly disallow costs associated with a contractor's failure to perform or comply with a regulation or order only under extreme circumstances where it can be shown that this failure was a result of willful misconduct on the part of contractor senior management. The NNSA may not properly disallow contract costs as a penalty for LANS' failure to perform or meet a regulation or order. In all cases where NNSA disallows LANS' contract cost, the contractor has a contractual right to challenge that disallowance by filing a claim with the Civilian Board of Contract Appeals.

QUESTION FROM CONGRESSMAN WHITFIELD

LANL

Question 11: What steps are you and Secretary Bodman taking to determine whether there are opportunities to reduce and consolidate the number of classified computers, classified security areas, and classified vaults at LANL?

Answer 11: Los Alamos National Laboratory (LANL) is closely scrutinizing the need for the existing and newly requested classified computers, classified security areas, and classified vaults. NNSA CIO approved the LANL "super-VTR" (Vault Type Room) concept to consolidate classified operations into information service centers. The first super-VTR will consolidate 5 VTRs into a single facility. This facility will be in operation in the 3rd quarter of FY 2007. Additionally, the Laboratory has closed 3 of 22 VTRs. 3 more will be closed by the end of April, and 5 more by the end of FY 2007. LANL is also on track to further reduce its CREM holdings by an additional 90% from 364 to a dozen or so pieces in the near term. In addition, 6 the Weapons Physics Division VTRs will be reduced by 3 at the end of FY 2007.

QUESTION FROM CONGRESSMAN STUPAK

Shortfalls in Security

Question 5: How is NNSA addressing the staff shortfalls in security?

Answer 5: Los Alamos Site Office (LASO) has an adequate number of properly trained staff to fulfill minimum requirements. Site Office performance would be enhanced through the addition of about three additional security professionals, one each in information protection, physical security, and program management. The Acting Site Office Manager is closely reviewing the existing LASO organizational and staffing and will submit his recommendations for additional requirements to the Administrator for consideration. NNSA is moving as aggressively as possible to fill open positions at the site office.

QUESTION FROM CONGRESSMAN WHITFIELD

LANL

Q5. Is the Secretary of Energy prohibited from directing subordinate NNSA federal or contractor personnel from taking actions to improve management at LANL and other weapons laboratories?

A5. No. The Secretary and Deputy Secretary can provide direction to NNSA employees and contractors through the Administrator of NNSA; these employees and contractors are responsible to the Secretary, Deputy Secretary and Administrator for carrying out the tasks they have been directed to perform.

QUESTION FROM CONGRESSMAN WHITFIELD

Internal Organization

- Q6. Does the NNSA Act also prohibit the Secretary of Energy from directing any internal reorganization of the NNSA? Hasn't this authority been a fixture of the Department's organic act since 1977?
- A6. Section 3219 of the NNSA Act (50 USC 2409) provides that the Secretary of Energy may not establish, alter, consolidate, or discontinue any organizational unit or component, or transfer any function, of the Administration, subject to the certain exceptions in Section 3291 of the NNSA Act (50 USC 2481). Section 3291 authorizes the Secretary to transfer to NNSA any facility, mission, or function that the Secretary, in consultation with the Administrator and Congress, determines to be consistent with the mission of the Administration. In addition, Section 3291 provides that the Secretary may transfer responsibility for any environmental remediation and waste management activity associated with NNSA's national security function to another element of the Department of Energy.

The Secretary's internal reorganization authority that was limited by Section 3219 of the NNSA Act has been a "fixture" of the Department of Energy Organization Act since 1977.

QUESTION FROM CONGRESSMAN WHITFIELD

LANL Activities

- Q7. Has the accountability for activities at the weapons laboratories been hampered or anticipated improvements in security performance at LANL not come to pass due to the restrictions in the NNSA Act described above?
- A7. The NNSA Act has not hampered accountability for the security incidents at LANL. I do not believe there are issues with the NNSA Act that have delayed improvements in security at LANL.

QUESTION FROM CONGRESSMAN WHITFIELD

Cyber Security

- Q9. Are there deficiencies within NNSA, in addition to cyber security, that the Department could commit resources to solve, but is prevented by the NNSA Act?
- A9. The limitations of the NNSA Act have impeded certain options for management of available resources, but have not affected the potential availability of the resources themselves.

QUESTION FROM CONGRESSMAN WHITFIELD

H.R. 703

Q.10. Please review House of Representatives Bill 703, the NNSA Accountability Act, and provide your comments regarding this legislation.

A.10. H.R. 703 would amend the NNSA Act by removing the current law's limitations on the Secretary's delegation authority and the ability of non-NNSA DOE personnel to exercise authority, direction, or control over NNSA personnel with respect to the conduct of health, safety, or security functions by NNSA. While certain elements of the NNSA Act presents obstacles to management success across the weapons complex, I do not believe legislation is necessary at this time.

The current law's restrictions on outside DOE direction of NNSA actually maximize accountability by NNSA for all functions it performs, including those related to health, safety, and security. While the enactment of legislation such as H.R. 703 might enable certain management approaches that would enhance NNSA's actual proficiency in the specified areas, absent complementary reorganization authority in the Secretary, implementation of such legislation would have to be done with considerable care to avoid adverse effects such as diffusion of responsibility and accountability by blurring, or creating redundant, chains of command in operating NNSA.

QUESTION FROM BART STUPAK

Civil Penalties

- Q1. Does the National Nuclear Security Administration (NNSA) intend to evaluate civil penalties independently from award fee reductions?
- A1. Yes, it does.

QUESTION FROM BARK STUPAK

LANS

- Q6. NNSA's director of LASO, Mr. Wilmot, notified LANS on December 6 that LANS had failed to retain key personnel under the terms of the contract. Is this a breach of contract? What are the consequences?
- A6. The departure of a member of LANS's team of key personnel was not a breach of the contract. Under the contract, LANS is obligated to propose a replacement of equal talent, capability and experience for approval by NNSA. NNSA may reduce the fee LANS can earn for the two-year period for which this member of the team had committed to stay at LANL. NNSA anticipates that LANS will soon propose a replacement for this position.

QUESTIONS SUBMITTED BY CONGRESSMAN STUPAK

The Inspector General testified that National Nuclear Security Administration (NNSA) officials relied almost exclusively on the Office of Independent Oversight, Office of Health, Safety and Security to conduct detailed inspections of Los Alamos's classified information systems. These inspections are completed once every two years. However, the inspection at Los Alamos had not been performed for about four years for a variety of reasons including the 2004 stand-down at the Laboratory.

Q1: Since the Office of Independent Oversight does not have line management responsibility, why is it being assigned this line management function?

The Office of Independent Oversight does not have line management responsibility for oversight of cyber security. However, this office maintains a continuing independent oversight assessment program on behalf of the Secretary of Energy. These independent assessments, while of value to line managers, are intended to measure independently the level of performance of line organizations in establishing effective cyber security programs. Independent oversight assessments do not obviate the need for line management to maintain a robust program for line management oversight.

Q2: Does the line program (Los Alamos Site Office / NNSA) lack the manpower or subject matter expertise to conduct detailed inspections of classified security systems and ensure contractor compliance with Department of Energy / NNSA security requirements?

NNSA does have the expertise necessary to conduct such inspections, and it is anticipated that inspections of cyber security systems at all NNSA sites will be completed by May 25, 2007.