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ONE HUNDRED TENTH CONGRESS

*U.S. House of Representatives*  
**Committee on Energy and Commerce**  
**Washington, DC 20515-6115**

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July 5, 2007

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The Honorable Samuel W. Bodman  
Secretary  
U.S. Department of Energy  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Dear Secretary Bodman:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Friday, April 20, 2007, at the hearing entitled "The Department of Energy's Response to Ongoing Mismanagement at the Los Alamos National Labs (LANL)." We appreciate the time and effort you gave as a witness before the Subcommittee.

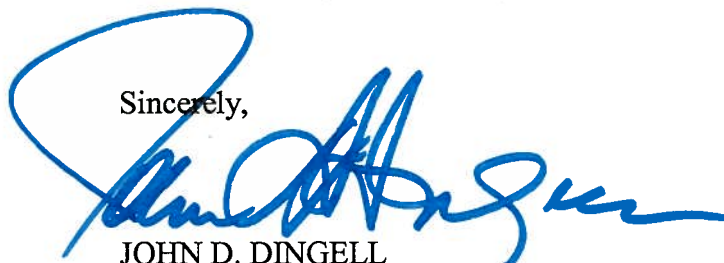
Under the Rules of the Committee on Energy and Commerce, the hearing record remains open to permit Members to submit additional questions to the witnesses. Attached are questions directed to you from certain Members of the Committee. In preparing your answers to these questions, please address your response to the Member who has submitted the question and include the text of the Member's question along with your response. Please begin the responses to each Member on a new page.

To facilitate the printing of the hearing record, your responses to these questions should be received no later than the close of business **Friday, July 20, 2007**. Your written responses should be delivered to **316 Ford House Office Building** and faxed to **202-225-5288** to the attention of Kyle Chapman, Legislative Clerk. An electronic version of your response should also be sent by e-mail to Mr. Kyle Chapman at [kyle.chapman@mail.house.gov](mailto:kyle.chapman@mail.house.gov) in a single Word formatted document.

The Honorable Samuel W. Bodman  
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Thank you for your prompt attention to this request. If you need additional information or have other questions, please contact Kyle Chapman at (202) 226-2424.

Sincerely,



JOHN D. DINGELL  
CHAIRMAN

Attachment

cc: The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce

The Honorable Bart Stupak, Chairman  
Subcommittee on Oversight and Investigations

The Honorable Ed Whitfield, Ranking Member  
Subcommittee on Oversight and Investigations

## **The Honorable Bart Stupak**

1. In 2006, the Department of Energy's (DOE) Office of Health, Safety and Security (HSS) found failing or substandard security performance in 14 of 17 key areas at Los Alamos National Labs (LANL), including classified matter protection and control, cyber security, and emergency management. The trend was negative when compared with 2002. Mr. Podonsky, the head of that Office, testified on January 30, 2007 that "Los Alamos received the lowest set of performance ratings for security and emergency management since 1999."
  - a. Why was there such a sharp downturn at LANL, particularly between 2002 and 2006? Was this a failure of the contractor, or the Los Alamos Site Office, or both?
  - b. What distinguishes the specific actions covered in your testimony from those taken by your predecessors who, I note, also worked hard and in good faith to effectuate reforms at LANL?
2. The Inspector General's testimony calls for accountability for failure to follow established security measures. What specific actions has DOE taken, as of this date, to hold its contractor at LANL accountable?
3. At the April 20, 2007, hearing, you stated that all contracts will be modified requiring contractors to comply with the March 8, 2007, DOE Manual for National Security Systems not later than June 8, 2007. Please provide a list of all contracts that have to be modified.
4. Has the June 8, 2007, deadline been met for all contracts? If not, which contracts have not been modified?
5. Who is responsible for tracking the process to ensure that all contracts in the National Nuclear Security Administration (NNSA) are modified on schedule?
6. What specific language is being put into each contract? Please provide the exact text that is being used in all contracts.
7. Have all relevant contracts been modified to include the December 4, 2006, DOE Order 205.1A, Cyber Security Program Management? If not, which contracts have not been modified?
8. What is the time frame and estimated cost to implement the requirements of the DOE Manual for National Security Systems?
9. How much will be expended to implement the cyber security upgrades in fiscal year (FY) 2007?

**The Honorable Bart Stupak (continued)**

10. What amounts were included in the FY2008 budget request to fund cyber security upgrades outlined in the February 28, 2007, Ad Hoc Task Force Report to the Secretary? Will there be a FY 2008 budget modification to reallocate funds for implementation?
11. NNSA established a "Pilot of the New NNSA Oversight Model at Los Alamos," which publicly surfaced in a memo in May 2006. This two-year pilot calls for reduced Federal oversight of "business systems, non-nuclear safety, project management, and all other areas (except security and performance of nuclear operations)" by verifying that the contractor has "an adequate internal oversight process." The pilot calls for use of "third party verification" instead of Federal Government employees. It directs the Los Alamos Site Office manager "to attain and maintain the reduced staffing target of 117." This memo called for waivers or variations from DOE Orders regarding Federal responsibilities. With respect to this memo, you stated at the April 20, 2007, hearing, "I don't understand what that is, I never heard of it."
  - a. Having had a chance to review this memo, can you please clarify if you were aware of this LANL pilot when you testified?
  - b. Did Linton Brooks ever discuss with you the idea of a pilot involving reduced Federal oversight? Did he discuss this with anyone else on your staff? If so, who discussed this with you and when?
  - c. If not, are there communications problems between the NNSA and your office that would have caused you to be uninformed of this new policy?
12. Given core weaknesses in cyber security and safety, and the history of mismanagement, do you believe that reduced Federal oversight is the appropriate model for LANL at this time?
13. Do you plan to review the so-called "pilot" and reinstate conventional Federal oversight with staffing commensurate with the necessary levels of oversight?
14. Please list all DOE orders for which there was a waiver or variance to implement this "Pilot."
15. On what date did Linton Brooks issue this pilot memo? The memo is undated.
16. Beginning July 1, 2006, this pilot memo calls for six milestones through June 30. Please identify which milestones have been completed.
17. Was cyber security excluded from the scope of the pilot, or only physical and personnel security? Is the scope of the pilot spelled out in the implementation plan? If not, in

**The Honorable Bart Stupak (continued)**

which document is the scope of the pilot explained in detail?

18. The memo establishing the pilot states this new model presents a “significant risk based on past performance of the laboratory.” Linton Brooks states in the memo that he is “accepting risk on behalf of the federal government” if there are problems arising out of this pilot.
  - a. Was Linton Brooks authorized to accept responsibility on behalf of the Federal Government? Who delegated this authority to him?
  - b. What did Mr. Books mean when he said he would “assume responsibility on behalf of the federal government?” Does this mean he is personally liable? If so, to what extent?
  - c. Given that Linton Brooks is no longer the NNSA Administrator, who is going to assume the liability on behalf of the Federal Government if problems arise under the pilot? Please name this individual.
  - d. Since Mr. Brooks is no longer the Administrator of the NNSA and Mr. Wilmot is no longer the Los Alamos Site Office (LASO) site manager, is the policy direction in this memo still in effect? Are the milestones still in effect?
19. The Inspector General testified that his Office had strong reservations about this pilot. Are you aware of the specific concerns raised by the Inspector General? If you are aware of these concerns, please provide a response to these criticisms.
20. Please provide a copy of the implementation plan for the LANL pilot.
21. Has DOE commenced any enforcement actions pursuant to 10 CFR Part 824 against the University of California or Los Alamos National Security, LLC (LANS) with respect to cyber security violations at LANL that were discovered in the context of the police discovering classified information in the home of a LANL subcontractor employee, or in the course of any follow up investigations?
22. When did DOE issue DOE Order 470 and the related implementation manuals? When was the LANS contract awarded? When did DOE place Order 470 and its related manuals in the LANS contract? Why did DOE wait 13 months to place these requirements in the contract?
23. Has DOE’s legal capacity to bring an enforcement action against LANS for each and every specific violation of DOE Order 470 been impaired, to any extent, due to the failure to include updated security orders (including Order 470) in the LANS contract for 13 months? Which specific violations will not be citable as a consequence of this omission?

**The Honorable Bart Stupak (continued)**

24. Who is responsible for failing to include the updated DOE orders in the LANS contract at the time it was signed? What accountability actions have been taken?
25. The February 2007 Secretary of Energy Task Force Review of the Departmental Personnel Security Program recommended the review of 4,360 clearance cases involving prior drug use. The scope of this review involved clearances granted over the prior 5 years with the objective of identifying whether there was admitted drug use in the previous 12 months. Has DOE completed this review of 4,360 security clearances? What are the specific findings from this review? How many security clearances, if any, were granted to individuals with admitted drug use in the 12 months prior to granting the security clearance, and what specific actions have been taken?
26. Please describe the January 2007 cyber security violation, which involved the transmission of unencrypted secret restricted data to LANL Board members, and the subsequent transmission to other LANS Board members. Please describe the accountability measures that were taken in this case. Will this incident be reflected in the annual performance fee evaluation?
27. In GAO's January 2007 report entitled *NNSA: Additional Actions Needed to Improve Management of the Nation's Nuclear Programs*, GAO reported that NNSA does not have sufficient Federal staff to oversee the security programs of its contractors and that it has been a persistent problem since NNSA's creation.
  - a. Does LASO still have vacancies in key technical areas that are necessary for contractor direction and oversight? How many vacancies are there and in what positions?
  - b. What is the personnel head count in LASO?
  - c. Do you have a management team in the Los Alamos Site Office, which you can rely upon to effectively manage all aspects of LANL? If not, what needs to be improved in the LASO?
  - d. Are there staffing shortfalls in the NNSA Service Center's Personnel Security Department?
28. The award fee pool for the LANS contract is about \$73 million—a 10-fold increase compared with the award fee formerly paid to the University of California. Is DOE getting a 10-fold increase in performance from LANS?
29. About 30 percent of the \$73 million award fee pool for LANS is fixed, and only 70 percent is at risk. Would it make sense to make 100 percent of the award fee completely at risk to better incentivize performance? Why should the contractor have a guaranteed award fee of \$22 million per year?

**The Honorable Bart Stupak (continued)**

30. The NNSA recently modified the award fee plan for LANS by increasing the amount of at-risk fee allocated to “management leadership” by \$6 million and reducing other performance categories by about \$6 million. Since this change in award fee simply reallocates at-risk fee and amounts to less than 10 percent of the overall fee, why does DOE expect this change will better affect the performance of LANS?
  
31. Is part of the reason Los Alamos has had repeated security problems due to the footprint for classified operations being simply too large and the facilities too far flung to manage classified information effectively?

### **The Honorable Joe Barton**

1. Last July, you formed a Task Force to review the separate organization of NNSA within the Department. Did the Task Force identify language within the NNSA Act that prohibits the delegation of authority over NNSA beyond the Deputy Secretary?
2. Does the language in the NNSA Act create a significant obstacle to realizing improved security at LANL, and the benefits of functional accountability and sound management between the NNSA and the broader Department? Please identify the specific language within the NNSA Act that prohibits the delegation of authority beyond the Deputy Secretary.
3. Did any member of the Task Force recommend amending the NNSA Act to alter the restrictions on delegating authority for safety, security, cyber security, or any other responsibility beyond the Deputy Secretary?
4. 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?
5. Does the NNSA Act also prohibit the Secretary of Energy from directing any internal reorganization of the NNSA? Has not this authority been a fixture of the Department's organic act since 1977?
6. 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?
7. Does the insularity of NNSA impair the Department's ability to commit resources to correct deficiencies at NNSA, such as cyber security?
8. Are there deficiencies within NNSA in addition to cyber security that the Department could commit resources to solve, but are prevented by the NNSA Act?
9. Please review H.R. 703, the NNSA Accountability Act, and let us know whether DOE and the Administration supports this language.
10. What steps are you taking to determine whether there are opportunities to reduce and consolidate the number of classified computers, classified security areas, and classified vaults at LANL?