



**Department of Energy**  
Washington, DC 20585

June 13, 2007

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

Dear Mr. Chairman:

On January 30, 2007, Clay Sell, Deputy Secretary; Glenn Podonsky, Chief Health, Safety and Security Officer; and Thomas N. Pyke, Jr., Chief Information Officer, testified regarding, "Continuing Security Concerns at the Los Alamos National Laboratory."

Enclosed are answers to the questions that you and Representative Ed Whitfield submitted to Deputy Secretary Sell and Mr. Podonsky for the hearing record. Also enclosed is the one remaining answer to a question that you submitted to Thomas D'Agostino, Acting Administrator, National Nuclear Security Administration, to complete the hearing record.

If we can be of further assistance, please have your staff contact our Congressional Hearing Coordinator, Lillian Owen, at (202) 586-2031.

Sincerely,

A handwritten signature in cursive script that reads "Eric Nicoll".

Eric Nicoll  
Acting Assistant Secretary  
Congressional and Intergovernmental Affairs

Enclosures



## QUESTION FROM CHAIRMAN BART STUPAK

### Question addressed to Deputy Secretary Sell

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.

Q1a. Since the Office of Independent Oversight does not have line management responsibility, why is it being assigned this line management function?

A1a. 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.

Q1b. 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?

A1b. 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.

## **QUESTIONS FROM REPRESENTATIVE ED WHITFIELD**

### **Questions addressed to Deputy Secretary Sell**

- Q1. Last July, you led 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?**
- A1. Yes, it did.**
- Q2. Does this language in the NNSA Act create a significant obstacle to realizing improved security at Los Alamos National Laboratory (LANL) and the benefits of functional accountability and sound management between the NNSA and the broader Department?**
- A2. The NNSA Act's prohibitions of exercise of "authority, direction, or control" of NNSA personnel and the limitations of the Secretary's delegation authority over NNSA to only the Deputy Secretary have impeded the Department's ability to harmonize principled differences that inevitably can arise among respective NNSA and non-NNSA Departmental elements responsible for common or similar functions, such as environmental remediation at active NNSA sites, cyber security, physical security, and procurement. The absence of this customary and otherwise uniformly-available authority in executive agencies withholds from the Secretary and the Deputy Secretary the means to resolve such differences through delegates of their own choosing, and instead all conflicts must be resolved by the Deputy Secretary personally, when collegial discussions between DOE and NNSA staff do not result in an agreed upon decision.**

**Q3. Please identify the specific language within the NNSA Act that prohibits the delegation of authority beyond the Deputy Secretary.**

**A3. Section 3202 of the NNSA Act (42 USC ' 7132) provides that “the Under Secretary [for Nuclear Security] shall be subject to the authority, direction, and control of the Secretary. Such authority, direction, and control may be delegated only to the Deputy Secretary of Energy, without redelegation.”**

**All other NNSA federal personnel “shall be responsible to and subject to the authority, direction, and control of...the Secretary acting through the [Under Secretary for Nuclear Security]...and...shall not be responsible to, or subject to the authority, direction, or control of, any other officer, employee, or agent of the Department of Energy.” (Section 3220 of the NNSA Act (50 USC ' 2410)).**

**NNSA contractor personnel “shall not be responsible to, or subject to the authority, direction, or control of, any officer, employee, or agent of the Department of Energy who is not an employee of the Administration, except for the Secretary of Energy....” (Section 3220 of the NNSA Act (50 USC ' 2410)).**

**Q4. Did you, the Task Force, or any member of the Task Force recommend that the Secretary request of Congress any changes to this language?**

**A4. The Task Force discussed seeking legislative changes to this language; however, that course of action was not recommended to the Secretary. Each Task Force member submitted recommendations to the Deputy Secretary. In the event, the Deputy Secretary determined not to recommend particular legislative solutions at that time.**

## 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.

## 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.

### **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.

Q8. Does the insularity of NNSA impair the Department's ability to commit resources to correct deficiencies at NNSA, such as cyber security?

A8. Yes, if not properly managed. The NNSA act prohibits non- NNSA Department of Energy personnel from exercising authority, direction or control over NNSA personnel. However, the Department has the ability to provide assistance, advice, and information on best practices. In the area of cyber security, the DOE CIO works closely with the CIO of NNSA to ensure that requested support is provided to NNSA in a timely manner, and in a way that is consistent with the NNSA Act. No organizational structure is necessarily perfect. Most can be made to work. That is what we are working to do.

### **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.

### **H.R. 703**

Q10. Please review House of Representatives Bill 703, the NNSA Accountability Act, and provide your comments regarding this legislation.

A10. 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.

### **LANL**

Q11. 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?

A11. 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 REPRESENTATIVE ED WHITFIELD

### Question addressed to Glenn S. Podonsky

Q1. What is the timeline for assessing any civil fines or penalties against LANS or the University of California with respect to this most recent security incident?

A1. The Department of Energy (“Department”) continues to investigate the October 2006 discovery of classified matter in an unauthorized location in the vicinity of Los Alamos National Laboratory (LANL). The Department accordingly has not made any decisions, and is therefore unable to discuss, whether an enforcement action will be taken or whether any civil penalties will be sought. The following discussion, however, provides an outline of the process and the schedule for addressing this event.

The Department’s procedures, 10 C.F.R. Part 824 and Appendix A, call for it to undertake an investigation and to prepare an investigation report, both of which are complete. The Department’s procedures also call for it to conduct an enforcement conference with the parties identified as objects of its investigation. The Department has held an enforcement conference with Los Alamos National Security, L.L.C. (LANS), and with the University of California (UC). UC was allowed until April 30, 2007, to submit additional information to the administrative record as a consequence of its request to do so during the enforcement conference.

The Department intends to make a determination shortly whether to issue a preliminary notice of violation (PNOV) to LANS, UC, or both. The PNOV may

be proposed with or without civil penalties (fines). The Department's procedures allow a party receiving a PNOV thirty days to respond to it, after which the Department may issue a final notice of violation (NOV) with or without civil penalties (fines).

In addition, the Secretary may issue a Compliance Order directing a contractor to take or refrain from taking certain actions in order to protect classified information. A contractor that fails to abide by the terms of such a Compliance Order is subject to the issuance of an NOV and the imposition of civil penalties under 10 C.F.R. § 824.4(b). The Office of Health, Safety & Security is preparing a recommendation to the Secretary on whether to issue such an order to LANS; UC is no longer the LANL contractor and thus no order against it may be issued.

In addition to these sanctions (fines and compliance orders), the Department may reduce the fees awarded under the contract to LANS, UC, or both.

## QUESTION FROM CHAIRMAN BART STUPAK

### Question addressed to Thomas P. D'Agostino

Q1. What is the timeline for assessing any civil penalties or reductions in award fees against Los Alamos National Security (LANS) or the University of California with respect to this most recent security incident?

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