



**Department of Energy**  
Washington, DC 20585

September 7, 2007

The Honorable John D. Dingell  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

On April 20, 2007, Samuel Bodman, Secretary of Energy, testified regarding "The Department of Energy's Response to Ongoing Mismanagement at the Los Alamos National Labs."

Enclosed are the answers to 41 questions that were submitted by Chairman Stupak, and Representative Barton 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, appearing to read "Lisa E. Epifani".

Lisa E. Epifani  
Assistant Secretary  
Congressional and Intergovernmental  
Affairs

Enclosures

cc: Representative Joe Barton  
Ranking Member  
Committee on Energy and Commerce

Chairman Bart Stupak  
Subcommittee on Oversight and Investigations

Representative Ed Whitfield  
Ranking Member  
Subcommittee on Oversight and Investigations



## QUESTION FROM CHAIRMAN STUPAK

### Security at LANL

Q1. 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 Laboratory (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."

Q1a. 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?

A1a. Following 9/11, the expectations for security performance in all aspects of physical security increased significantly, including three changes to the Design Basis Threat planning assumptions. Progress at LANL has been slower than desired, and NNSA expects the Laboratory and the Site Office to respectively improve the implementation and oversight of the physical security program.

Q1b. 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?

A1b. I asked for the resignation of the Under Secretary for Nuclear Security. NNSA replaced the manager of the Los Alamos site office. I issued a Compliance Order to the management and operating contractor at LANL -- LANS, LLC -- requiring it to take specific corrective actions regarding the protection of classified information by dates certain. Failure to comply with the requirements of this order would subject LANS to penalties of up to \$100,000 per day for each violation. The acting Under Secretary for Nuclear Security issued preliminary notices of violation (PNOV) to LANS and to the University of California (UC),

the former management and operating contractor at LANL. The PNOV issued to LANS proposes the assessment of a civil penalty of \$300,000. The PNOV issued to UC proposes a civil penalty of \$3,000,000, the largest penalty the Department has ever proposed.

## QUESTION FROM CHAIRMAN STUPAK

### LANL Security Incident

Q2. 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?

A2. I issued a Compliance Order to the management and operating contractor at LANL -- LANS, LLC -- requiring it to take specific corrective actions regarding the protection of classified information by dates certain. Failure to comply with the requirements of this order would subject LANS to penalties of up to \$100,000 per day for each violation. The acting Under Secretary for Nuclear Security issued preliminary notices of violation (PNOV) to LANS and to the University of California (UC), the former contractor at LANL. The PNOV issued to LANS proposes the assessment of a civil penalty of \$300,000. The PNOV issued to UC proposes a civil penalty of \$3,000,000, the largest penalty the Department has ever proposed. NNSA has the right to reduce the fee award to LANS and UC for failing to protect classified information subject to the terms and conditions in NNSA's contracts with the university and LANS.

### QUESTION FROM CHAIRMAN STUPAK

Q3. 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.

A3. Each NNSA M&O contract required modification. This includes the following site contracts:

Los Alamos National Laboratory  
Lawrence Livermore National Laboratories  
Sandia National Laboratory  
Pantex Plant  
Kansas City Plant  
Y-12  
Nevada Test Site

## QUESTION FROM CHAIRMAN STUPAK

Q4. Has the June 8, 2007, deadline been met for all contracts? If not, which contracts have not been modified?

A4. All contracts with the exception of Kansas City Plant have been modified to include DOE O 205.1A and the applicable manual DOE M 205.1-4 although the Y-12 and Nevada Test Site contracts were modified after June 8, 2007. The Kansas City Plant contract contains a Site Specific Security Standard inclusive of the requirements.

## **QUESTION FROM CHAIRMAN STUPAK**

- Q5. Who is responsible for tracking the process to ensure that all contracts in the National Nuclear Security Administration (NNSA) are modified on schedule?
- A5. The Office of Acquisition and Supply Management is responsible for oversight of all acquisition related matters.

### **QUESTION FROM CHAIRMAN STUPAK**

- Q6. What specific language is being put into each contract? Please provide the exact text that is being used in all contracts.
- A6. Each M&O contract contains an appendix listing all orders and directives applicable to the contracts. The modifications updated these listings.



## QUESTION FROM CHAIRMAN STUPAK

- Q7. 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?
- A7. All contracts cited above have been modified with the exception of the Kansas City Plant contract. The Kansas City Plant contract contains a Site Specific Security Standard inclusive of the requirements.

## QUESTION FROM CHAIRMAN STUPAK

Q8. What is the time frame and estimated cost to implement the requirements of the DOE Manual for National Security Systems?

A8. The DOE Manual for National Security Systems has been added to all NNSA sites' contracts with the exception of the contract for the Kansas City Plant (KCP). The KCP contract contains a Site Security Standard (SSS) in lieu of this and other manuals addressing protection of classified information and cyber security. The substitution of the SSS for the manuals is part of the pilot project to streamline contract assurance procedures at KCP. The DOE office of Health, Safety and Security will review this pilot project after which the Department will decide whether to continue, modify or terminate it. Currently the Site Office, plant and laboratory management are working to establish the implementation timeframe. The estimated cost per site is approximately \$3M.

## QUESTION FROM CHAIRMAN STUPAK

Q9. How much will be expended to implement the cyber security upgrades in fiscal year (FY) 2007?

A9. With the Continuing Resolution, the President's fiscal year 2007

budget provided 104.5 million for cyber security. The activities comprise four major categories: 1) cyber security infrastructure, 2) cyber security technology development, 3) enterprise secure network and 4) diskless workstation task force.

Of the cyber security infrastructure funding (\$67.5M), approximately 75 percent maintains the current program and 25 percent is used for enhancements and improvements to the base cyber security infrastructure. Additionally, during fiscal year 2007, the NNSA senior leadership reallocated \$13M for implementation of the cyber security enhancements outlined in the Department's cyber security review.

## QUESTION FROM CHAIRMAN STUPAK

Q10. 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?

A10. The Department's FY2008 budget request includes approximately \$137 million for cyber security. This includes funding for activities, products, and services required to implement an enterprise cyber security program. This enterprise cyber security program generally incorporates the issues outlined in the February 28, 2007, Ad Hoc Task Force Report to the Secretary. There are no plans to modify the FY 2008 budget to provide additional funding for implementation.

Of the \$137 million requested for cyber security, \$102 million is for cyber security at National Nuclear Security Administration (NNSA) landlord sites.

These funds are segregated into four major categories: 1) Infrastructure Program, 2) Technology Application Cyber Security, 3) Enterprise Secure Computing and 4) Classified Diskless Workstation Operations. Some of these funds will be applied to mitigating the risks identified in the Task Force's Report. The remaining \$35 million requested is for the DOE OCIO cyber security program.

## QUESTION FROM CHAIRMAN STUPAK

### Pilot

Q11. 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 “and adequate internal oversight process.” The pilot calls for the use of “third part 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 calls 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.”

Q11a. Having had a chance to review this memo, can you please clarify if you were aware of this LANL pilot when you testified?

A11a. Upon reviewing the memo, I remember the pilot to be one of many initiatives undertaken in response to a report by the Defense Science Board Task Force on Nuclear Capabilities. The report made recommendations to DoD (for subsequent transmittal to the National Nuclear Security Administration (NNSA)) about improving the performance of NNSA. Since the DoD is an important customer of NNSA, I responded to the recommendations with an action plan for improving how the Department manages the laboratory. The response to the DoD was signed by the Deputy Secretary as a primary initiative to improve management performance within the NNSA. The response included many initiatives, including the LANL Pilot.

Q11b. 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?

A11b. Ambassador Brooks and I, as well as the Deputy Secretary, had numerous discussions regarding the most significant issues identified in the Defense Science Board Task Force report, including the focus of Federal oversight. The effort was not to reduce Federal

oversight, but focus oversight on high hazard and high risk activities. Our focus needs to be on protecting the public and workers and holding the Contractor accountable for doing so as well. We must do our best using the tools available to manage the contract rather than managing the contractor's staff. The intent is to have contractors improve their performance and assessment process so that the Federal staff can focus on key areas that drive overall performance and provide confidence that the contractor is meeting requirements and expectations.

Q11c. If not, are there communications problems between NNSA and your office that would have caused you to be uninformed of this new policy?

A11c. As indicated above, Ambassador Brooks and I, as well as the Deputy Secretary had numerous discussions about these matters.

## QUESTION FROM CHAIRMAN STUPAK

Q12. 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?

A12. Strong Federal oversight at all DOE/NNSA facilities and associated activities is a key element in the implementation of the department's Oversight and Evaluation Program. In general, streamlining the model to improve the efficiency and overall effectiveness of oversight for the department and the Federal facilities is the appropriate approach. This is predicated on a strong initial evaluation of the site's ability to manage key areas while ensuring protection of human health, safety, and the environment. The Federal oversight model is adjusted at each site or facility based on the requirements of that site or facility in key areas. Given the unique circumstances at LANL, the streamlined approach may take longer to implement based on progress LANS makes in demonstrating the ability to manage key areas, especially in cyber security, physical security and nuclear safety. The Compliance Order recently issued by the Secretary imposes additional oversight on LANS regarding cyber security and the protection of classified information.

## QUESTION FROM CHAIRMAN STUPAK

### Federal Oversight

Q13. Do you plan to review the so-called “pilot” and reinstate conventional Federal oversight with staffing commensurate with the necessary levels of oversight?

A13. My office reviewed and will continue to review the pilot and Federal oversight at LANL to ensure that they are effective and consistent with DOE requirements.



## QUESTION FROM CHAIRMAN STUPAK

### DOE Orders

Q14. Please list all DOE orders for which there was a waiver or variance to implement this "Pilot".

A14. There have been no DOE orders for which a waiver or variance was required to implement the pilot oversight model at the Los Alamos National Laboratory.

## QUESTION FROM CHAIRMAN STUPAK

### Pilot

- Q15. On what date did Linton Brooks issue this pilot memo? The memo was undated.
- A15. Ambassador Brooks sent the letter on March 13, 2006, to the Los Alamos Site Office Manager directing him “to move immediately into a two-year pilot of our new oversight model once you have concurred with the LANS Contractor Assurance System.”

## QUESTION FROM CHAIRMAN STUPAK

### Pilot Milestones

Q16. Beginning July 1, 2006, this pilot memo calls for six milestones through June 30. Please identify which milestones have been completed.

A16. On March 13, 2006, the Administrator of the National Nuclear Security Administration sent a letter to the Los Alamos Site Office (LASO) Manager directing LASO *“to move immediately into a two-year pilot of our new oversight model once you have concurred with the LANS Contractor Assurance System.”* In addition, several specific actions were also requested. The first four actions were accomplished and resulted in: (1) a LASO re-organization that assigned the existing 116 Full Time Employees to specific roles; (2) a Performance Evaluation Plan that provided a set of measures to use the fee at-risk to incentivize LANS performance, and (3 & 4) implementation of a new method to provide oversight using the LANS Contractor Assurance System (CAS).

Three actions remain:

- a) One action was due in January 2007. It directs LASO to formulate a recommendation using award term as a contract incentive. That action is currently being coordinated and will be completed by August 2007.
- b) The second action was due in June 2007. It requires LASO to develop a plan for the conduct of an external review that would confirm final implementation and acceptance of the LANS CAS by NNSA. The plan has been drafted and it proposes that the external review occur in November 2008.

c) The final action calls for an assessment of the pilot and its associated lessons learned by September 2008 along with a revised recommendation concerning the site office required staffing level. Ongoing reviews reveal that the LANS CAS program is not mature yet. When it is mature, LASO will re-evaluate the staffing levels. The LASO staff continues to assess the LANS CAS and the revised staffing level is expected to be completed by December 2008.

## QUESTION FROM CHAIRMAN STUPAK

Q17. 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 which document is the scope of the pilot explained in detail?

A17. The initial scope of the pilot included physical security and nuclear safety. The Los Alamos Site Office Manager's memorandum dated September 28, 2006, to the Deputy Administrator for Defense Programs expanded the scope of transactional oversight performed within the pilot to include all of security, which includes cyber security and personnel security.

## QUESTION FROM CHAIRMAN STUPAK

### LANL Pilot Project

Q18. 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.

Q18a. Was Linton Brooks authorized to accept responsibility on behalf of the Federal Government? Who delegated this authority to him?

A18a. NNSA believes that Ambassador Brooks was accepting personal responsibility for the risks presented by implementing a new model for federal oversight at LANL. As the Under Secretary for Nuclear Security, Ambassador Brooks had the authority to implement a different approach to federal oversight for the laboratory, and to accept personal responsibility for its success or failure.

Q18b. What did Mr. Brooks mean when he said he would “assume responsibility on behalf of the federal government?” Does this mean he is personally liable? Is so, to what extent?

A18b. NNSA believes that Ambassador Brooks meant that he recognized the new oversight model posed risks and that he would accept personal responsibility for those risks. Although this new oversight model had no causal relationship to the security incident discovered in October 2006, the Secretary determined after this incident that NNSA needed a change in leadership, and asked for Ambassador Brooks’s resignation.

Q18c. 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.

A18c. I, the Deputy Secretary, the NNSA Administrator and the LASO site manager assumed primary responsibility on behalf of the federal government for the

performance of LANL in this and other matters by choosing to serve our country in these positions. We take this responsibility seriously, as do the other employees of NNSA and the Department who assist us in meeting these and the other obligations of our offices.

Q18d. 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?

A18d. The oversight approach described in the memorandum has been replaced by an approach developed under DOE Order 226.1, which focuses on LANS's contractor assurance system (CAS). This new approach incorporates aspects of the approach described in the memo: the first four actions described in the memo were accomplished and resulted in: (1) a LASO re-organization that assigned federal employees to specific roles; (2) a Performance Evaluation Plan that provided a set of measures designed to increase the effectiveness of fee awards to improve LANS's performance, and (3 & 4) implementation of a new oversight method using LANS's CAS. There are three remaining actions in the new approach:

1. One milestone is overdue (January 2007). This milestone requires development of a recommendation for using award fee in a manner that increases incentives for contractor performance. That action is currently underway and will be completed by August 2007.

2. The second action was due in June 2007. It required LASO to develop a plan for the conduct of an external review that would confirm implementation and acceptance of the LANS CAS by NNSA. Based on LANS's implementation of its CAS and experience in implementation of similar contract assurance systems,

NNSA anticipates an external review of LANS's CAS could occur around November 2008.

3. The final milestone involves an assessment of the CAS program, analysis of lessons learned, and development of recommendations concerning staffing levels for the site office. NNSA anticipates this milestone will be achieved in December 2008.



## QUESTION FROM CHAIRMAN STUPAK

DOE IG

Q19. 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.

A19. I am aware of the Inspector General's testimony. I have been informed that the Inspector General is currently working on a white paper on the subject. I will carefully consider the information upon receipt of this document.

## QUESTION FROM CHAIRMAN STUPAK

### LANL Pilot

- Q20. Please provide a copy of the implementation plan for the LANL pilot.
- A20. The combination of: (a) issuance of a resource-loaded and prioritized Los Alamos Site Office Oversight (LASO) Integrated Assessment Schedule; (b) LANS's implementation of the Contractor Assurance System (CAS); (c) LASO's evaluation of the CAS; and (d) effective utilization of the Performance Evaluation Plan constitute the implementation plan for the LANL pilot, which has evolved since March 2006.

# memorandum

National Nuclear Security Administration  
Los Alamos Site Office  
Los Alamos, New Mexico 87544

DATE: JUN 30 2006  
REPLY TO:  
ATTN OF: OOM:EW:010  
SUBJECT: Transmittal of Implementation Plan for the Los Alamos Site Office Oversight Pilot

TO: Thomas P. D'Agostino, Deputy Administrator for Defense Programs, NA-10,  
HQ/FORS

Ref: Memo from Brooks to Wilmot, dtd March 13, 2006, Subj: Pilot of the New National Nuclear Security Administration Oversight Model at Los Alamos

Please find attached the first deliverable required in the reference. I am in the process of formalizing our "sprint" using project management tools to ensure our success. I believe that we can be successful. I ask you to keep in mind that the most important outcome will not be the organization and management systems we create through the implementation plan but rather change in culture of the organization as we adapt to the new model for oversight. This change will take considerably longer than the period of the implementation plan.

Since I believe that the success of the oversight endeavor will be impacted by our ability to have regular direct communications, I ask that you be receptive to periodic status calls. As we discussed yesterday, I have included copies for Ambassador Brooks and Tyler Przybylek at your request.

I wish to thank you for your continued personal support. I will do everything I can to deserve it.



Edwin L. Wilmot  
Manager

cc w/attachment:  
L. Brooks, NA-1, HQ/FORS  
T. Przybylek, NA-1, HQ/FORS

## Implementation Plan for Pilot of the New National Nuclear Security Administration Oversight Model at Los Alamos

In his memo dtd March 13, Subj: Pilot of the New National Nuclear Security Administration Oversight Model at Los Alamos, the Administrator, NNSA, requested the Los Alamos Site Office (LASO) create and implement a new model for oversight consistent with the original vision for the NNSA. The most fundamental tenet of the model is to rely on the contractor assurance system (CAS) to be provided by the new contractor for the Los Alamos National Laboratory (LANL). The federal workforce will provide supplemental oversight on a risk/consequence basis. The key areas in which federal oversight would be supplemented and remain “transactional” are nuclear safety and physical security. Though the ultimate measure of success is to accomplish mission activities safely, securely, and compliantly, it is expected that the new model will: reduce micromanagement of contractor activities; reduce risk averse behavior; establish clear line management accountability; and result in direction to the contractor as to what to do not how to do it. The first deliverable required in the memo is the completion of an implementation plan for the LASO oversight model. This document satisfies that requirement. It should be noted that since the issuance of the memo referenced above, a change in reporting relationship has occurred. The LASO Site Office now reports to the Deputy Administrator for Defense Programs, a relationship which places the Site Office in a direct line management role where mission and safety, security, and compliance must be balanced at the Site Office. The new model will factor in this tension.

### STRATEGY FOR IMPLEMENTATION

The implementation of the new oversight model will be an enormous culture change for LASO. A new organization will be implemented in addition. Considerable evidence exists regarding the fatigue and frustration within the Site Office. These facts make implementation a tremendous challenge. Engagement of LASO staff and achieving their ownership and buy-in to the changes has to be a foremost consideration. The manner of implementation will clearly allow numerous, if not continuous, meaningful opportunities for participation by anyone interested.

To this point, calls have gone out to all staff soliciting their input and participation on the formation teams that have already crafted the organizational concept shown in Figure 1, “Operations Concept – LASO Support to Mission.” Workshops will continue to be conducted to allow direct staff involvement in all phases of development of the concept and the reorganization. Staff will be continually encouraged to participate in any and all of the activities identified. Principal staff will allow their staff up to about 50 percent of their time to participate.

Principal staff is fully engaged. The Manager is leading the entire activity and principal staff have been challenged to lead major activities. Each principal staff has committed to

corporate activities related to the Pilot as well as corporate activities related just to keeping the organization running. About 50 percent of principal staff time will be dedicated to implementing the pilot. A prioritized list of activities needed to “keep the place running” has been established and will be the focus of the other 50 percent of principal staff time.

## NEED FOR ENGAGEMENT OUTSIDE OF LASO

It is apparent that unique concepts will be considered during the next few months that may involve the cooperation and resources of Headquarters, other Site Offices and the Service Center. It is quite likely that organizational concepts may be proposed that would involve housing Site Office staff at the Service Center and Headquarters, relying on virtual teams including other Site Offices, and relocating staff to facilities at the Laboratory. Proposals may also be made as to the reallocation of resource within the NNSA in order to better support the oversight model.

## WHAT MUST BE DONE?

The plan is divided into four major sections: (1) creation of an operations concept for oversight and an organizational realignment; (2) development of an integrated oversight plan for FY07; (3) development of a performance evaluation plan for LANL for FY07; and (4) coordinating the development of the LANL CAS. The first section is a radical change to the way in which the Site Office does business and is organized to do business. The other three sections are products that must be created by the Site Office even as it transforms itself.

### Operations Concept and Organizational Realignment

In order to be able to develop an implementation plan, an operations concept was developed as depicted in Figure 1, “Operations Concept - LASO Support to Mission.” The concept relies on operational teams within key facilities and integrated project teams for construction projects. The facilities and construction projects to be supported by these teams will be selected using a defensible resource allocation model. The teams will have the matrix or deployed support of functional groups (e.g. quality assurance, security, ES&H programs, facility representative) and federal functions such as contracting, budget, and NEPA. This support and the functional program oversight will also be allocated using the resource allocation model.

Figure 2, “Activity Logic,” is an activity logic for completing the implementation of the Oversight Pilot. The first activity is to finalize the operations concept by clearly defining roles and responsibilities identified in Figure 1. A block of four activities must be completed prior to allocating resources. They include: defining nuclear and non-nuclear operations by facility, project, and function; defining the LASO role in mission

accomplishment; developing a model to allocate Site Office staff resources by facility, by project, and by function; and performing a skills gap analysis. The federal function will need to be examined through a detailed functional decomposition of roles currently considered to be federal functions. A preliminary review of how to allocate federal resource indicates that the federal function can be minimized and resource conserved if roles are restricted to "approval," "concur," and "establish a Governmental position." These are clearly inherently governmental functions but the current federal role is interpreted as a much greater involvement such as "ensure," "administer," and "review." A concise definition of nuclear operations is needed as well as non-nuclear operations. It is likely that this definition will have to be made on a facility-by-facility basis, project-by-project basis as well as on a program support basis. These definitions will allow the work scope to be understood, roles to be clearly delineated and resources allocated. Then, a model must be developed that can be applied to the operational concept so that a clear rationale is maintained for allocating resources. The allocation model must identify: what facilities have resource assigned to them; what construction projects are considered, what federal functions are required; and the extent of application of functional groups. Finally, gaps in skills available to meet needs must be identified, i.e. given the needs, the question must be answered whether the current resources are adequate within the Site Office. At this point, a strategy will need to be developed about how to fill the gaps. Support from the remainder of the complex or retraining current staff are ideas that may need to be considered.

Once this block of activities is complete, resources can be allocated to an organizational model that must have been developed in parallel. With the existing authorized resources, the organization must be properly described in an approval package and approval obtained from Headquarters. Figure 3, "Beginning of Organizational Concept," begins to explain how the operational concept may be structured. The new organization must allow for the integration of input from each of the facility teams and project teams. Construction projects within operating facilities must be closely coupled through the teaming structure. Mission knowledge and operational awareness within specific facilities and within specific construction project teams must be integrated to provide a holistic Site perspective. Awareness must also be maintained for missions that do not specifically align with facilities, e.g. weapons design or computing activities. Though it must be integrated with other mission activities, the Environmental Management mission may need to be treated somewhat specially and independently. Regardless, the new organizational structure must facilitate communication and integration among the teams and the functional groups. A strong case will be made for transferring the RTBF mission responsibility from Headquarters to the Site Office because of the new potential structure. At this point, an oversight system description will be documented and submitted on or before September 1, 2006 (second milestone of Brooks memo, dtd March 13).

With the operational concept and organization in hand, management systems must be identified and documented. The LASO staff must then be trained and finally a formal start-up process be completed before the oversight model is implemented. Implementation must be complete by October 1, 2006. A coarse timeline for the activities described above are found in Figure 4, "Oversight Pilot Timeline." The

implementation plan will be managed using appropriate project management controls. A detailed project structure and rigor will be applied once approval is received for the Oversight Pilot Implementation Plan and Oversight Concept.

#### Integrated Oversight Plan

In concert with LANL, LASO will overlay its oversight plan for FY07 onto the oversight plan developed by the Laboratory. The oversight plan will cover every functional area for which LASO has responsibility. LASO planning will take into account external reviews, e.g. Defense Nuclear Facilities Safety Board to the limited extent they are known as well as any NNSA headquarters oversight planning including Chief Defense Nuclear Safety reviews. Heavy reliance will be placed on CAS for all functional areas outside of nuclear operations and physical security. The integrated oversight plan must be implemented by October 1, 2006.

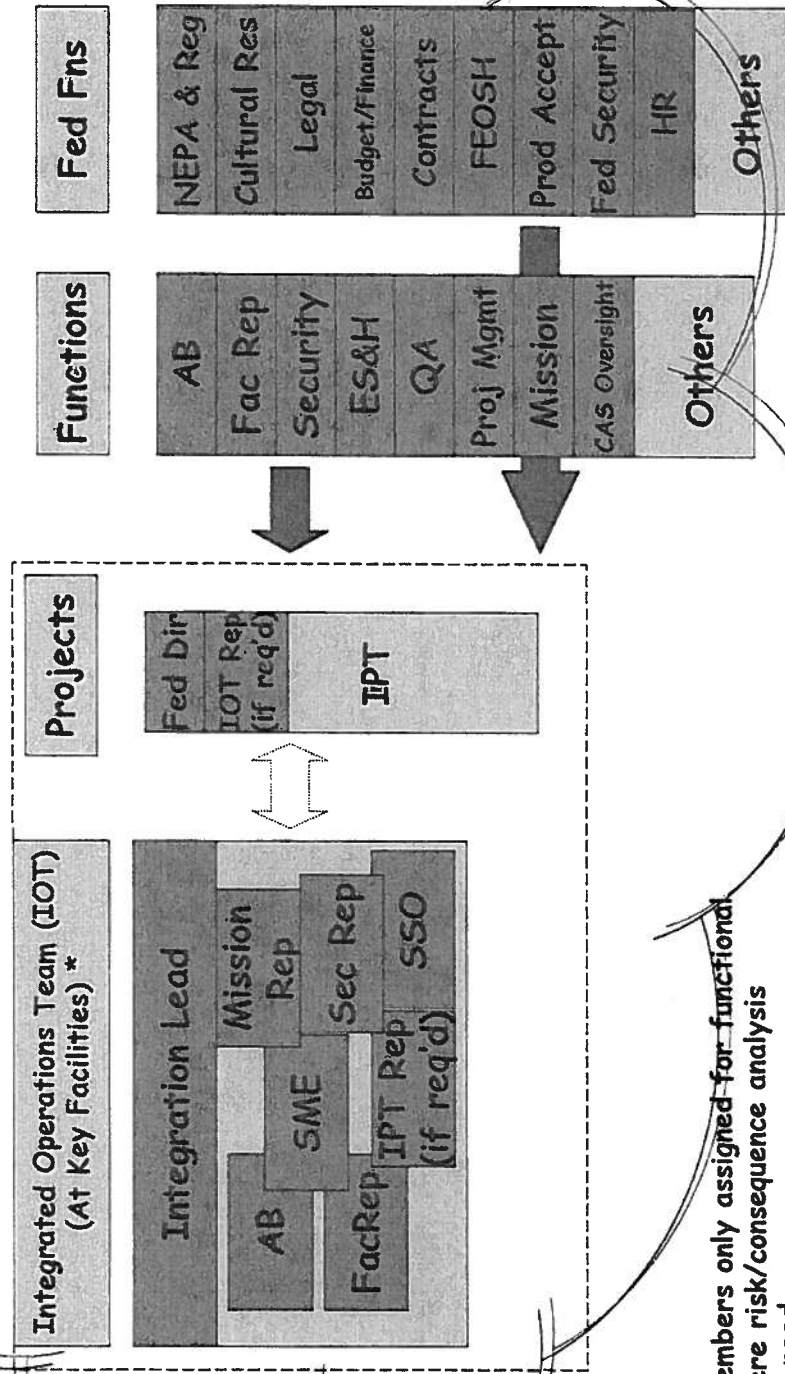
#### Performance Evaluation Plan (PEP)

NA-10 has assumed the lead in developing the PEP for FY07; however, LASO will negotiate the final PEP with LANL. Performance objectives, metrics, and incentives will be included within the PEP. It is the intent to develop an integrated set that are achievable but yet challenge the contractor. The PEP must be available in early September 2006.

#### Contractor Assurance System

LANL and LASO began collaborating on CAS development during contract transition. LASO will continue to coordinate with LANL during the development of its CAS to ensure that adequate metrics are included to allow LASO to perform its oversight role effectively. A CAS oversight model will be developed and included in the LASO Integrated Oversight Plan that will allow effective oversight of the CAS. The CAS must be implemented by October 1, 2006. Heavy reliance will be placed on the LANL CAS as the primary means of federal oversight for all functions except nuclear safety and physical security.

**Figure 1: Operations Concept - LASO Support to Mission**



\* IOT members only assigned for functional Areas where risk/consequence analysis Identifies need.



Figure 2: Activity Logic

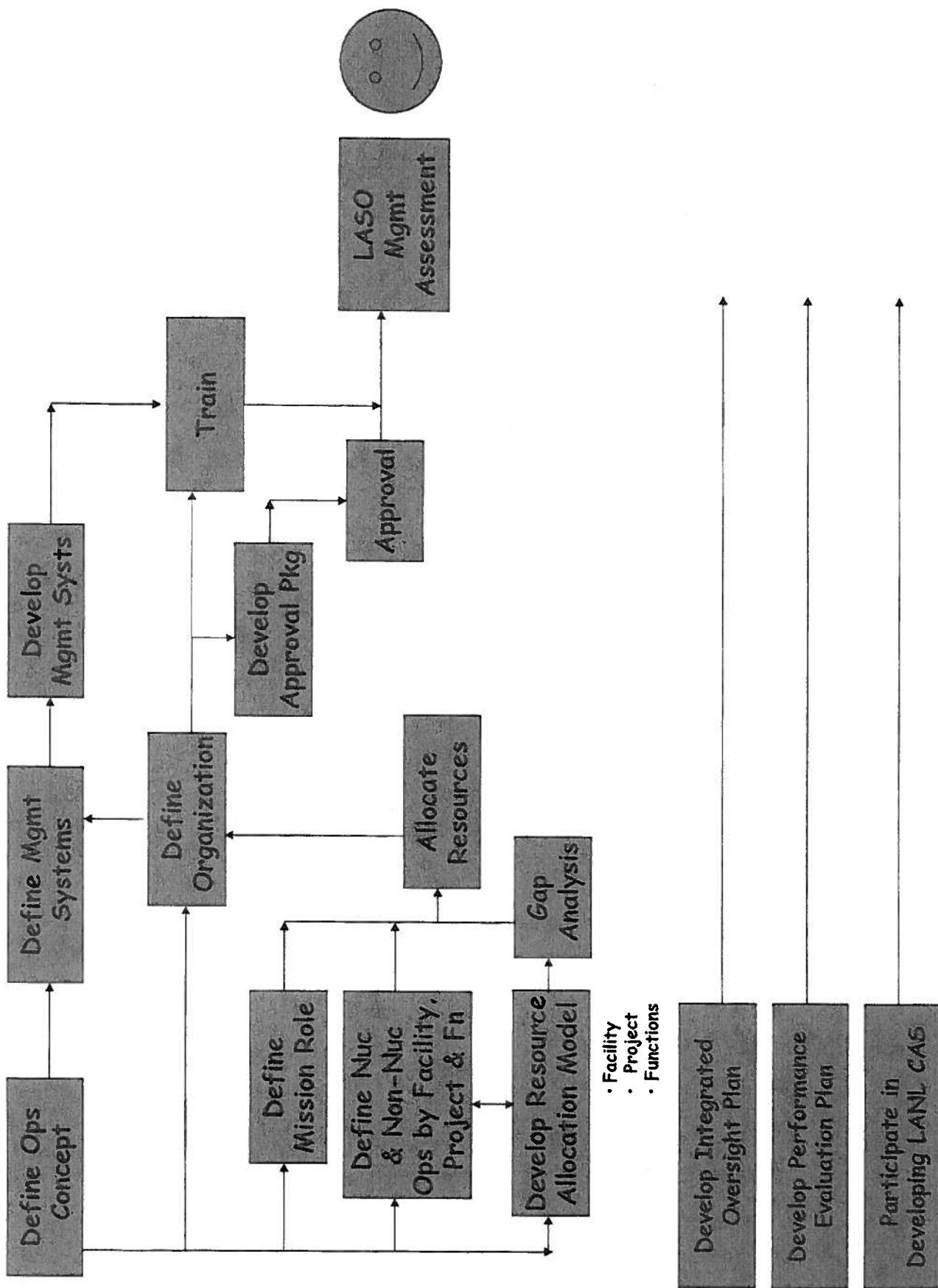
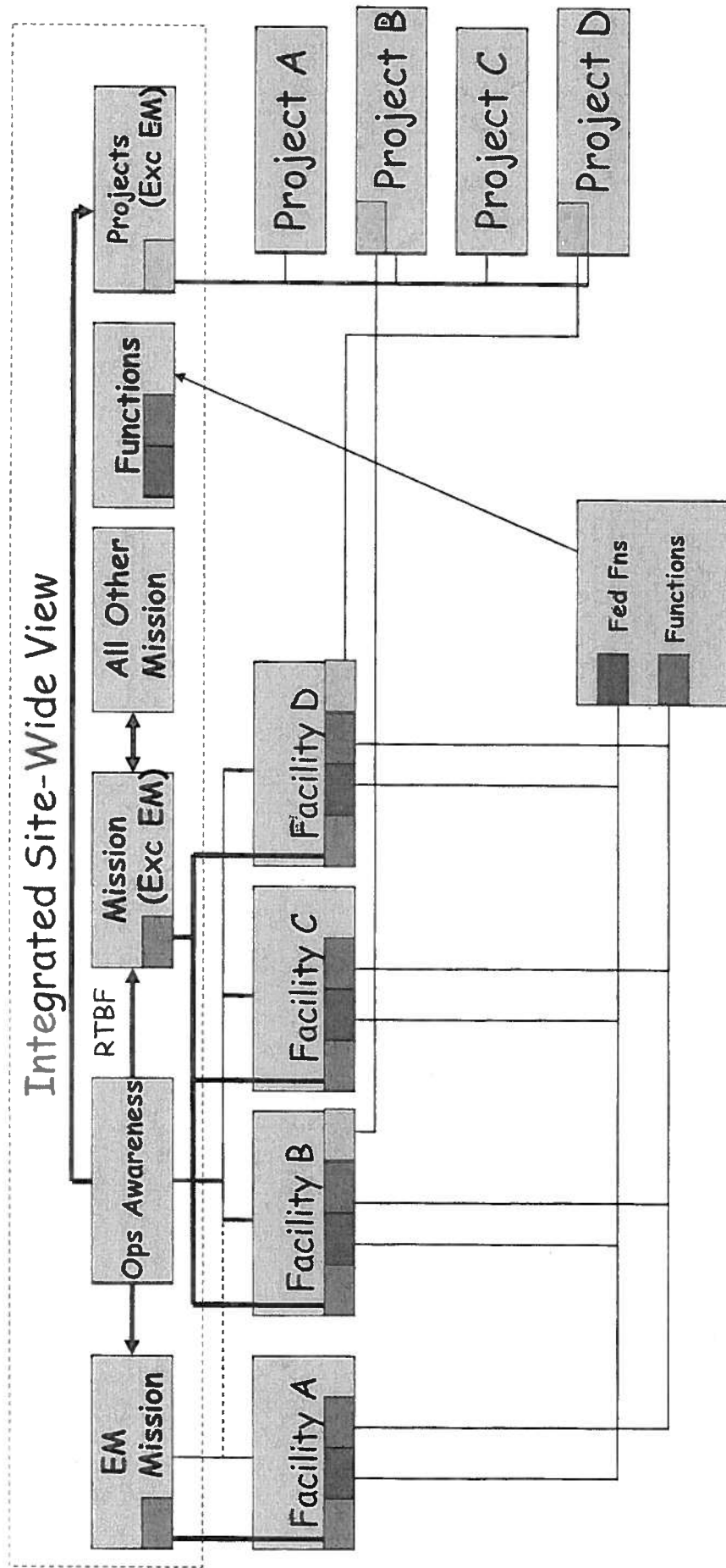
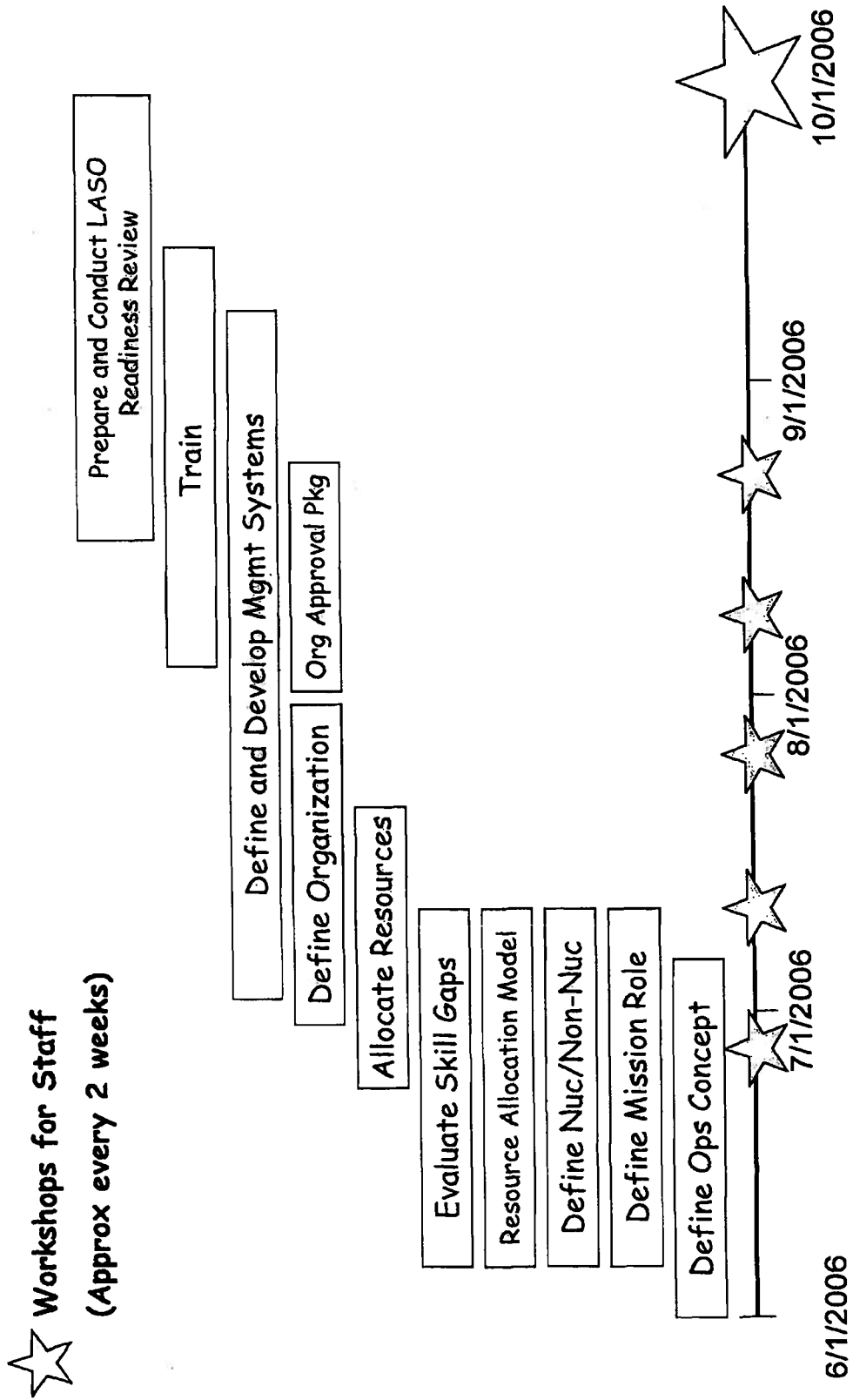


Figure 3: Beginning of Organizational Concept



# Figure 4: Oversight Pilot Time Line



## QUESTION FROM CHAIRMAN STUPAK

Q21. 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?

A21. Yes. In accordance with the Department of Energy ("Department") procedures (10 C.F.R. Part 824 and Appendix A), an investigation was completed and enforcement conferences were held on April 13, 2007 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 its enforcement conference. For serious violations of the Department's classified information and cyber security requirements on July 13, 2007, the National Nuclear Security Administration (NNSA) Administrator issued preliminary notices of violation (PNOV) to the University of California with a \$3M proposed civil penalty - the largest the Department has ever assessed - and to LANS with a \$300,000 proposed civil penalty. 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).

In addition, on July 12, 2007, the Secretary of Energy issued a compliance order to LANS which requires the contractor to take specific corrective actions on a prescribed timetable in the physical protection and cyber security of 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 assessment of civil penalties under 10 C.F.R. § 824.4(b) up to \$100,000 per day for each violation.

## QUESTION FROM CHAIRMAN STUPAK

### LANL Security Incident

Q22. 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?

A22. DOE issued Order 470 and the related implementation manuals on August 26, 2005. The LANS contract was awarded on December 21, 2005. NNSA cited these manuals in the LANS contract on January 24, 2007. These manuals were made part of the University of California's contract on October 11, 2005. NNSA's delay in making them part of LANS contract was inadvertent.

## QUESTION FROM CHAIRMAN STUPAK

### LANL Security Incident

- Q23. 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?
- A23. The Department's authority to bring enforcement actions for violations regarding the security of classified information is based on section 234B of the Atomic Energy Act of 1954. 42 U.S.C. § 2282b. Part 824 of title 10 of the Code of Federal Regulations establishes procedures for the exercise of the authority granted to the Department by section 234B of the Atomic Energy Act. 10 C.F.R. Part 824. Section 824.4(a)(3) of Part 824 allows the Department to assess civil penalties for violations of requirements in a DOE manual relating to the protection of classified information if the manual provides the violation of its provisions may result in civil penalties. 10 C.F.R. § 824.4(a)(3). Six of the seven violations asserted against LANS in the preliminary notice of violation (PNOV) were based on violations of requirements in the 470 series of manuals. However, the Department may have independent authority under section 234B of the Atomic Energy Act to take enforcement actions and impose penalties based on violations of requirements in the earlier versions of the 470 series of manuals that were part of the LANS contract when it took over management of LANL on June 1, 2006. Based on the mitigating factors presented by LANS regarding these six violations, NNSA decided not to impose any penalties for these violations. As

noted in the LANS PNOV, whether NNSA has independent enforcement authority for these violations under section 234B of the Atomic Energy Act is a moot question because NNSA did not impose penalties for these violations.



## **QUESTION FROM CHAIRMAN STUPAK**

Q24. 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?

A24. The awarding contracting officer was responsible for ensuring that all orders were updated at the time of award. The Service Center will add an independent review of all M&O contract award documents just prior to actual award to ensure that order/directive updates have been identified and acted upon.

## QUESTION FROM CHAIRMAN STUPAK

Q25. 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 and 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?

A25. On April 3, 2007, the nine personnel security offices in the Department were provided with a list of all individuals granted access authorizations during the past five fiscal years where there was an indication of past drug use. While the Task Force report estimated there were 4,360 to be reviewed, the actual cases identified numbered 4,071. The personnel security offices were given 90 days to complete their review. Results from all offices were received in the Office of Health, Safety and Security on July 3, 2007.

Analysts are currently reviewing the results received from the nine personnel security offices and a report is being developed. The report will include background information and a statistical analysis on all cases with drug use less than 12 months prior to the signing of the Questionnaire for National Security Positions. The report will also include a section on opportunities for improvement, if pertinent. The report will be completed by July 31, 2007; however, preliminary results indicate that the Task Force recommendation to strengthen DOE policy regarding drug use by clearance holders is well warranted.

Of the 4,071 cases reviewed, 95 were discovered to have been granted security clearances within 12 months of the last drug use.

The personnel security offices in the Department have begun a concentrated review of the cases identified to determine what action is required to assure that no current issues exist that would have the potential to damage the national security. Where appropriate, individuals will be interviewed and reinvestigated to determine if their past drug use is continuing.

## QUESTION FROM CHAIRMAN STUPAK

Q26. 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?

A26. In January 2007, a LANS Board of Governors Mission Committee member transmitted sensitive information unintentionally through an unsecured e-mail system. The incident was immediately recognized and reported, fully investigated, and the responsible officials reported that appropriate measures were taken to address the situation. When the Department learned of the incident, it was characterized correctly as an issue of human error rather than a failure of security systems. The incident involved transmission of two unclassified pieces of information, which, when combined into one email, provided classified information. Although this transmission was categorized immediately as an Impact Measurement Index 1 (IMI-1) incident, once the full context of the situation was understood and the damage assessment was completed, the Department determined that the incident did not cause significant harm or damage to the national security of the United States. The individual who transmitted the email was issued a security infraction which will be filed in the Personnel Security Folder.

The Acting Administrator has stressed previously to LANS that they will be held accountable for meeting safety, security and performance requirements at LANL.

This incident and other aspects of LANS performance will be taken into consideration as appropriate, and decisions about award fee will be made at the appropriate time.

## QUESTION FROM CHAIRMAN STUPAK

### LASO

Q27. 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.

Q27a. 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?

A27a. The interim LASO Manager conducted a comprehensive functional analysis and prioritized hiring actions against those function. The key hires are complete or planned for completion within 60 days. Great progress has been made in filling the critical positions over the last two months. The new LASO Revitalization Manager reported for duty on July 9, 2007. Two Team Lead positions within the Office of Security Management are now filled. Offers were made to two highly qualified applicants for the Senior Information Systems and Cyber Security Advisor; however, both individuals declined. Another vacancy announcement for this senior position must be issued. A Technical Deputy (at the Senior Executive Service level) has been tentatively selected and the action is at DOE Headquarters for approval.

In July 2007, NNSA has approved the addition of three personnel to LASO's Office of Security Management. Actions to fill these positions are being initiated.

Q27b. What is the personnel head count in LASO?

A27b. There are 103 NNSA employees currently on board at LASO, and there are 16 vacancies.

Q27c. 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?

A27c. The management team will be completed in the next few months. The LASO Revitalization Manager is now on board, a Technical Deputy at the SES level is tentatively selected, and an Assistant Manager for Safety Operations will be selected after the Technical Deputy is in place. The Assistant Manager for Business and Assessment is leaving for another position within two weeks and a recruitment action is in process for her replacement.

Q27d. Are there staffing shortfalls in the NNSA Service Center's Personnel Security Department?

A27d. The Federal staffing at the NNSA Service Center Personnel Security Department is deemed adequate by NNSA management to perform all required oversight and quality assurance functions. The Service Center is analyzing its work practices and evaluating future staffing requirements based upon projected workload and the adjudicative processing guidelines mandated by the Office of Management and Budget.

## QUESTION FROM CHAIRMAN STUPAK

### Fee Pool

Q28. 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?

A28. The intent is to drive continually increased performance over the period of the contract to earn the annual award fee. Failure to meet expectations results in reduction of fee. When the Department of Energy determined that the University of California's operation of the Los Alamos National Laboratory should be challenged by robust competition, the Department determined that the best way to attract strong competitors was to make the contract attractive by increasing the award fee pool. NNSA evaluates LANS against a set of high performance measures each year. While performance is monitored throughout the year, performance results and award fee determinations are at the end of the fiscal year.



## QUESTION FROM CHAIRMAN STUPAK

### Fee Pool

- Q29. 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 incentive performance? Why should the contractor have a guaranteed award fee of \$22 million per year?
- A29. The LANS contract has a conditional payment of fee clause that enables the fee determining official to reduce or eliminate the award fee, including the fixed portion, when the official determines that the contractor failed to comply with environment, safety, health, or security requirements. In the context of security, the official could eliminate the entire award fee if the failure to meet requirements could reasonably be expected to result in exceptionally grave damage to national security.

## QUESTION FROM CHAIRMAN STUPAK

### LANL Fee

- Q30. 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% of the overall fee, why does DOE expect this change will better affect performance at LANS?
- A30. The unilateral modification of the fee plan by the Department emphasizes to LANS that the Department believes leadership accountability is a critical part of its operating responsibility. The award fee is allocated among a broad range of categories, all of which are important to the proper performance of the contract for the management and operation of the laboratory.

### QUESTION FROM CHAIRMAN STUPAK

Q31. 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?

A31. While the causes of LANL's repeated security incidents are many, it is accurate to say that the large footprint and dispersion of the classified operations at the site make security for these operations more challenging. Dispersed classified operations drive increases in the number of support staff, such as document custodians and vault-type room (VTR) staff due to the number of classified areas that must be operated. The geographical dispersion of activities generates an additional need to move classified information, and increases the transactions and handoffs that have caused problems in the past. All of the individual factors involved in past incidents combine with geographical dispersion to make LANL more susceptible to errors and problems in conducting classified activities.

## **QUESTION FROM REPRESENTATIVE BARTON**

**Q1.** 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?

**A1.** Yes, it did.

## QUESTION FROM REPRESENTATIVE BARTON

- Q2. Does this 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.
- 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.

## QUESTION FROM REPRESENTATIVE BARTON

- Q3. 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?
- A3. 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 determined not to recommend particular legislative solutions at that time.

## QUESTION FROM REPRESENTATIVE BARTON

### NNSA Act

- Q4. Is the Secretary of Energy prohibited from directing subordinate NNSA federal or contractor personnel from taking actions to improve that management at LANL and other weapons laboratories?
- A4. The Secretary and Deputy Secretary can provide direction to NNSA employees and contractor personnel but only through the Administrator of NNSA. The Secretary can in some cases exercise direct control over a NNSA contractor, as occurred in the Compliance Order regarding cyber security recently issued to LANS. All NNSA employees and contractor personnel are responsible to the Secretary, Deputy Secretary and Administrator for carrying out the tasks they have been directed to perform.

## QUESTION FROM REPRESENTATIVE BARTON

### NNSA Act

- Q5. Does the NNSA Act also prohibit the Secretary of Energy from directing any internal reorganization of NNSA? Has not this authority been a fixture of the Department's organic act since 1977?
- A5. Section 3219 of the NNSA Act (50 U.S.C. § 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 U.S.C. § 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. Section 3219 of the NNSA Act expressly limits the reorganization authority otherwise granted to the Secretary by the Department of Energy Organization Act.



## QUESTION FROM REPRESENTATIVE BARTON

### NNSA Act

- Q6. 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?
- A6. The NNSA Act has not hampered accountability for the security incidents at LANL.

## QUESTION FROM REPRESENTATIVE BARTON

- Q7. Does the insularity of NNSA impair the Department's ability to commit resources to correct deficiencies at NNSA, such as cyber security?
- A7. 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 Chief Information Officer 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.

## QUESTION FROM REPRESENTATIVE BARTON

### NNSA Act

- Q8. 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?
- A8. 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 REPRESENTATIVE BARTON

### H.R. 703

Q9. Please review H.R. 703, the NNSA Accountability Act, and let us know whether DOE and the Administration support this language.

A9. 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 REPRESENTATIVE BARTON**

Q10. 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?

A10. The Associate Administrator for Defense Nuclear Security and the NNSA CIO jointly approved the LANL "super-VTR" 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 by the end of FY 2007. Additionally, the LANL Weapons Engineering Directorate plans to close half of its VTRs by the end of FY 2007 and reduce its Classified Removable Electronic Media (CREM) holdings by 90% from 364 to a dozen or so pieces. The Weapons Physics Directorate will also close half of its VTRs by the end of FY 2007. NNSA Federal security staffs are paying very close attention to LANL's classified space consolidation activities as LANL closely scrutinizes the need for existing and newly requested classified computers, classified security areas, and classified vaults.